

STATE OF IOWA
REQUEST FOR BIDS (RFB)
COVER SHEET

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Title Of RFB:	Web Portal Upgrade	RFB No.:	0921-185-01
Agency:	Office of the Chief Information Officer		
State seeks to purchase:	Upgrade and maintenance of web sales portal	Available to Political Subdivisions?	No
Number of mos. or yrs. of the initial term of the contract:	1 year	Number of possible annual extensions:	9
Anticipated initial Contract term start date:	12/1/2021	Anticipated initial Contract term end date:	11/30/2022
<p>State Issuing Officer:</p> <p>Steve Dawson, Office of the Chief Information Officer Phone: (515) 330-8085 E-Mail: steve.dawson@iowa.gov</p>			
<p>PROCUREMENT TIMETABLE—There are no exceptions to any deadlines for Bidders; however, Agency reserves the right to change the dates/times, in its sole discretion.</p>			
Event or Action:		Date/Time (Central Time):	
State Posts Notice of RFB on TSB website		9/29/2021	
State posts RFB to Bid Opportunities website		10/1/2021	
Bidders’ written questions, requests for clarification, and suggested changes due:		10/12/2021	
Agency’s written response to Bidders’ questions, requests for clarifications, and suggested changes due:		10/15/2021	
Bids Due		3:00pm 10/22/2021	

RFB Number: #0921-185-01

Title of RFB: Web Portal Upgrade

Anticipated Date to issue Notice of Intent to Award	10/28/2021
Anticipated Date to Execute Contract	11/21/2021
Important Websites:	URL:
Website where any Amendments or Addenda to this RFB will be posted	https://ocio.iowa.gov/information-technology-procurement/open-it-bid-opportunities
Firm Proposal Terms The minimum Number of Days following the deadline for submitting proposals that the Bidder guarantees all proposal terms, including price, will remain firm:	180 days

RFB #0921-185-01 – Web Development Services

SECTION 1 - INTRODUCTION

1.1 Bidder Instructions

Download this document and save it to a computer. Once saved, type in your responses to the required sections and save the document again, then return the bid document to the Issuing Officer via the email address provided on the cover page of this document. Alternately, you may print the document, write in your responses, scan the document, and email the bid. If the bid is not received in the Issuing Officer's email account by the due date and time, the bid will not be accepted. The State assumes no responsibility for emails sent but not received for any reason.

1.2 Purpose

The purpose of this Request for Bids (RFB) is to solicit bids from qualified entities to provide the goods and/or services identified on the RFB cover sheet and described further in this RFB to the Agency identified on the RFB cover sheet. The Agency intends to award a contract(s) beginning and ending on the dates listed on the RFB cover sheet, and the Agency may extend the contract(s) for up to the number of annual extensions identified on the RFB cover sheet at the sole discretion of the Agency. Any contract(s) resulting from the RFB shall not be an exclusive contract.

1.3 Definitions

For the purposes of this RFB and the resulting contract, the following terms shall mean:

"Bid" means the Bidder's bid submitted in response to the RFB.

"Contract" means the contract(s) entered into with the successful Bidder(s).

"Bidder" means an entity submitting a bid in response to this RFB.

"Agency" means the agency identified on the RFB cover sheet that is issuing the RFB and any other agency that purchases from the Contract.

"Alternative Bid" means a response to a bid that does not meet the exact requirements of the specification but offers an alternative for consideration. An alternative bid is submitted with an intentional variation to a provision, specification, term, or condition of the solicitation. This alternative, in the opinion of the Bidder, achieves the same end result. Alternative bids may be rejected as non-responsive.

"Responsible Bidder" means a Bidder that has the capability in all respects to perform the requirements of the Contract. In determining whether a Bidder is a Responsible Bidder, the Agency may consider various factors including, but not limited to, the Bidder's competence and qualifications to provide the goods or services requested, the Bidder's integrity and reliability, the past performance of the Bidder relative to the quality of the goods or services offered by the Bidder and the best interest of the Agency and the State. The determination of a Responsible Bidder will be made at the sole discretion of the Agency.

"Responsive Bid" means a Bid that complies with each of the provisions of this RFB, or is either an alternative bid or a bid with an exception, if accepted by the Agency. The determination of a Responsive Bid will be made at the sole discretion of the Agency.

“RFB” means this Request for Bids and any addenda hereto.

“State” means the State of Iowa, the Agency identified in the Bid Information Section, and all state agencies, boards, and commissions, and any political subdivisions making purchases from the Contract as permitted by this RFB.

“Political Subdivisions” means cities, counties and educational institutions.

1.4 Contract Term

The initial term of the contract is anticipated to begin December 1, 2021 and end on November 30, 2022.

1.5 Background Information

This RFB is designed to provide Bidders with the information necessary for the preparation of competitive Bids. The RFB process is for the Lead Agency’s and Participating Agencies’ benefit and is intended to provide the Lead Agency with competitive information to assist in the selection process. It is not intended to be comprehensive. Each Bidder is responsible for determining all factors necessary for submission of a comprehensive Bid.

Today, the State wholesales and distributes spirits only to privately-owned retail stores through the Iowa Alcoholic Beverages Division (“Agency”). The Agency is the sole wholesaler of liquor in Iowa. Currently, the Agency uses an online ordering system to streamline and simplify the ordering process, accessed through its Drupal 8 public-facing website. The portal is over six years old and is in need of several updates, and the current vendor’s contract has expired.

The Agency seeks a qualified vendor to update, host, and maintain its existing online ordering portal, as outlined by the scope of work in Section 4 of this RFB document, and to host and maintain the portal going forward.

SECTION 2 – ADMINISTRATIVE INFORMATION

2.1 Issuing Officer

The Issuing Officer identified in the RFB Bid Information Section is the sole point of contact regarding the RFB from the date of issuance until selection of the successful Bidder.

2.2 Restriction on Communication

From the issue date of this RFB until announcement of the successful Bidder, Bidders may contact only the Issuing Officer. The Issuing Officer will respond only to electronic questions regarding the procurement process. Bidders may be disqualified if they contact any State employee other than the Issuing Officer about the RFB except that Bidders may contact the State Targeted Small Business Office on issues related to the preference for Targeted Small Businesses.

The Agency assumes no responsibility for oral representations made by its officers or employees unless such representations are confirmed in writing and incorporated into the RFB through an addendum.

2.3 Amendment to the RFB

The Agency reserves the right to amend the RFB at any time using an addendum. The Bidder shall acknowledge receipt of all addenda in its Bid.

It is the Bidder's sole responsibility to check the OCIO Bid Opportunities page for addenda to posted documents.

2.4 Bid Amendment and/or Withdrawal

The Bidder may amend or withdraw and resubmit its Bid at any time before the Bids are due. The amendment must be submitted by the Bidder to the Issuing Officer's email address and received prior to the due date and time listed on the cover sheet of this RFB.

2.5 Submission of Bids

The Issuing Officer must receive the electronic Bid before the due date and time listed on the cover sheet of this RFB. **This is a mandatory requirement and will not be waived by the Agency. Any Bid received after this deadline will not be accepted.** It is the Bidder's responsibility to ensure the bid is received prior to the deadline.

Bidders must furnish all information necessary to enable the Agency to evaluate the Bid. Bids that fail to meet the mandatory requirements of the RFB may be rejected. Oral information provided by the Bidder will not be considered part of the Bid.

2.6 Bid Opening

The Issuing Officer will open Bids after the deadline for submission of Bids has passed. However, the names of Bidders who submitted timely Bids will be publicly available after the Bid opening. See Iowa Code Section 72.3. The announcement of Bidders who timely submitted Bids does not mean that an individual Bid has been deemed technically compliant or accepted for evaluation.

2.7 Costs of Preparing the Bid

The costs of preparation and delivery of the Bid are solely the responsibility of the Bidder.

2.8 Rejection of Bids

The Agency reserves the right to reject any or all Bids, in whole and in part, received in response to this RFB at any time prior to the execution of a written Contract. Issuance of this RFB in no

way constitutes a commitment by the Agency to award a Contract. This RFB is designed to provide Bidders with the information necessary to prepare a competitive Bid. This RFB process is for the Agency's benefit and is intended to provide the Agency with competitive information to assist in the selection of a Bidder to provide goods and/or services. It is not intended to be comprehensive and each Bidder is responsible for determining all factors necessary for submission of a comprehensive Bid.

2.9 Disqualification

The Agency will reject outright and will not evaluate Bids if the Bidder fails to deliver the Bid by the due date and time. The Agency may reject outright and may not evaluate Bids for any one of the following reasons:

- The Bidder acknowledges that a requirement of the RFB cannot be met.
- The Bidder's Bid materially changes a requirement of the RFB or the Bid is not compliant with the requirements of the RFB.
- The Bidder's Bid limits the rights of the Agency.
- The Bidder fails to include information necessary to substantiate that it will be able to meet a requirement of the RFB.
- The Bidder fails to timely respond to the Agency's request for information, documents, or references.
- The Bidder fails to include bid security, if required.
- The Bidder fails to include any signature, certification, authorization, stipulation, disclosure or guarantee requested.
- The Bidder presents the information requested by this RFB in a format inconsistent with the instructions of the RFB or otherwise fails to comply with the requirements of the RFB.
- The Bidder initiates unauthorized contact regarding the RFB with state employees.
- The Bidder provides misleading or inaccurate responses.
- There is insufficient evidence (including evidence submitted by the Bidder and evidence obtained by the Agency from other sources) to satisfy the Agency that the Bidder is properly responsive and responsible to satisfy the requirements of the RFB.
- The Bidder alters the language in any of the bid documents.

2.10 Immaterial Variances

The Agency reserves the right to waive or permit cure of immaterial variances in the Bid if, in the judgment of the Agency, it is in the Agency's best interest to do so. Immaterial variances include minor informalities that do not affect responsiveness, that are merely a matter of form or format, that do not change the relative standing or otherwise prejudice other Bidders, that do not change the meaning or scope of the RFB, or that do not reflect a material change in the requirements of the RFB. In the event the Agency waives or permits cure of immaterial variances, such waiver or cure will not modify the RFB requirements or excuse the Bidder from

full compliance with RFB specifications or other contract requirements if the Bidder is awarded the contract. The determination of materiality is in the sole discretion of the Agency.

2.11 Reference Checks

The Agency reserves the right to contact any reference to assist in the evaluation of the Bid, to verify information contained in the Bid and to discuss the Bidder's qualifications and the qualifications of any subcontractor identified in the Bid.

2.12 Information from Other Sources

The Agency reserves the right to obtain and consider information from other sources concerning a Bidder, such as the Bidder's capability and performance under other contracts, the qualifications of any subcontractor identified in the Bid, the Bidder's financial stability, past or pending litigation, and other publicly available information.

2.13 Verification of Bid Contents

The content of a Bid submitted by a Bidder is subject to verification. If the Agency in its sole discretion determines that the content is in any way misleading or inaccurate, the Bidder may be disqualified.

2.14 Bid Clarification Process

The Agency reserves the right to contact a Bidder after the submission of Bids for the purpose of clarifying a Bid to ensure mutual understanding. This contact may include written questions, interviews, site visits, a review of past performance if the Bidder has provided goods and/or services to the State or any other political subdivision wherever located, or requests for corrective pages in the Bidder's Bid. The Agency will not consider information received if the information materially alters the content of the Bid or alters the type of goods and/or services the Bidder is offering to the Agency. An individual authorized to legally bind the Bidder shall sign responses to any request for clarification. Responses shall be submitted to the Agency within the time specified in the Agency's request. Failure to comply with requests for additional information may result in rejection of the Bid as non-compliant.

2.15 Disposition of Bids

All Bids become the property of the Agency and shall not be returned to the Bidder at the conclusion of the selection process, the contents of all Bids will be in the public domain and be available for inspection by interested parties except for information for which Bidder properly requests confidential treatment according to exceptions provided in *Iowa Code Chapter 22* or other applicable law.

2.16 Public Records and Requests for Confidential Treatment

The Agency will treat all information submitted by a Bidder as public information unless the Bidder properly requests and submits a redacted document with specific parts of the Bid treated as confidential at the time of submitting the Bid. The Agency's release of information is governed by Iowa Code Chapter 22. Bidders are encouraged to familiarize themselves with Chapter 22 before submitting a Bid. The Agency will copy public records as required to comply with the public records laws.

The Bidder must enumerate the specific grounds in Iowa Code Chapter 22 or other applicable law which support treatment of the material as confidential and explain why disclosure is not in the best interest of the public. Pricing information cannot be considered confidential information. The request for confidential treatment of information must also include the name,

address, and telephone number of the person authorized by the Bidder to respond to any inquiries by the Agency concerning the confidential status of the materials.

Any Bid submitted which contains specific confidential information must be conspicuously marked as containing confidential information. **NOTE: Failure to properly identify specific confidential information shall relieve Agency or State personnel from any responsibility if confidential information is viewed by the public, a competitor, or is in any way accidentally released. Identification of the entire Bid as confidential may be deemed non-responsive and disqualify the Bidder.**

If the Agency receives a request for information marked confidential, written notice shall be given to the Bidder seven calendar days prior to the release of the information to allow the Bidder to seek injunctive relief pursuant to *Section 22.8 of the Iowa Code*.

The Agency will disclose the information marked confidential upon request unless a court of competent jurisdiction determines the information is confidential under *Iowa Code Chapter 22* or other applicable law.

The Bidder's failure to request confidential treatment of material will be deemed by the Agency as a waiver of any right to confidentiality the Bidder may have had.

2.17 Copyrights

By submitting a Bid, the Bidder agrees that the Agency may copy the Bid for purposes of facilitating the evaluation of the Bid or to respond to requests for public records. The Bidder consents to such copying by submitting a Bid and warrants that such copying will not violate the rights of any third party. The Agency shall have the right to use ideas or adaptations of ideas that are presented in the Bids.

2.18 Release of Claims

By submitting a Bid, the Bidder agrees that it will not bring any claim or cause of action against the Agency based on any misunderstanding concerning the information provided herein or concerning the Agency's failure, negligent or otherwise, to provide the Bidder with pertinent information in this RFB.

2.19 Bidder Presentations

At the sole discretion of the Agency, Bidders may be required to make a presentation of the Bid. The presentation may occur in-person or online. The determination as to need for presentations, the location, order, and schedule of the presentations is at the sole discretion of the Agency. The presentation may include slides, graphics and other media selected by the Bidder to illustrate the Bidder's Bid. The presentation shall not materially change the information contained in the Bid.

2.20 Evaluation of Bids Submitted

Bids that are timely submitted and are not subject to disqualification will be reviewed in accordance with the RFB.

2.21 Preference

By virtue of statutory authority, a preference will be given to products and provisions grown and coal produced within the state of Iowa. Preference application: Tied responses to solicitations,

regardless of the type of solicitation, are decided in favor of Iowa products and Iowa-based businesses per 11 IAC 117.

2.22 Determination of Responsible Bidder & Responsive Bid

All Bids will be first evaluated to determine if they comply with the bid requirements (i.e. to determine if the Bidder is a Responsible Bidder submitting a Responsive Bid). To be deemed a Responsible Bidder and a Responsive Bid, the Bid must comply with the bid format instructions and answer "Yes" to all parts and include information demonstrating the Bidder will be able to comply with the bid requirements.

2.23 Evaluation Criteria

The Agency will evaluate the Responsive Bids submitted by Responsible Bidders to determine the lowest responsible bidder(s) and will award the Contract(s) to the Bidder(s) submitting the lowest responsible bid(s) based on price.

2.24 Award Notice and Acceptance Period

Notice of Intent to Award the Contract(s) will be sent to all Bidders submitting a timely Bid via email. Negotiation and execution of the Contract(s) shall be completed no later than thirty (30) days from the date of the Notice of Intent to Award. If the apparent successful Bidder fails to negotiate and deliver an executed contract by that date, the Agency, in its sole discretion, may cancel the award and award the Contract to the remaining Bidder the Agency believes will provide the best value to the State.

2.25 Definition of Contract

The full execution of a written contract shall constitute the making of a contract for the goods and/or services requested by the RFB and no Bidder shall acquire any legal or equitable rights relative to the contract for goods and/or services until the contract has been fully executed by the successful Bidder and the Agency.

2.26 Choice of Law and Forum

This RFB and the Contract are to be governed by the laws of the State of Iowa. Changes in applicable laws and rules may affect the award process or the Contract. Bidders are responsible for ascertaining pertinent legal requirements and restrictions. Any and all litigation or actions commenced in connection with this RFB shall be brought in the appropriate Iowa forum.

2.27 Restrictions on Gifts and Activities

Iowa Code Chapter 68B restricts gifts which may be given or received by State employees and requires certain individuals to disclose information concerning their activities with the State government. Bidders are responsible to determine the applicability of Chapter 68B to their activities and to comply with its requirements. In addition, pursuant to Iowa Code Section 722.1, it is a felony offense to bribe or attempt to bribe a public official.

2.28 Appeals

2.28.1 Generally. A Bidder whose Bid has been timely filed and who is aggrieved by the Notice of Intent to Award of the Agency may appeal the decision by filing a written Notice of Intent to Appeal (in accordance with Iowa Administrative Code rule 129—11.3) to: The State of Iowa Alcoholic Beverages Division, Attn: Administrator, 1918 SE Hulsizer Road, Ankeny, IA 50021, and a copy to the Issuing Officer. The Notice of Intent to Appeal must be filed within five (5) days of the date of the Notice of Intent to Award issued by the Agency, exclusive of Saturdays, Sundays, and legal State holidays. Following the Agency's receipt of the Notice of Intent to Appeal, the Agency will transmit to the appellant the materials required by and in accordance with Iowa Administrative Code rule 129—11.3(2). An appellant shall not be entitled to additional discovery, materials, or information in furtherance of the appeal unless and until the proceedings advance to a second tier review pursuant to and in accordance with Iowa Administrative Code chapter 129—11.

2.28.2 Appeal Bond/Security. As contemplated and permitted by Iowa Administrative Code rule 129—10.12(2)(c), an appellant appealing a Notice of Intent to Award shall, accompanying the Notice of Intent to Appeal, supply an appeal bond equal to 5 percent of the total contract value. If the contract value is not readily discernible, the Agency will supply the Respondent with an estimate upon request, which estimate shall be determinative. This appeal bond shall be separate, distinct, and in addition to any bond required by Iowa Administrative Code rule 129—11.10(1)(a) in connection with a petition for stay of the Award, if sought, or an appeal security required in connection with any request for second-tier review in accordance with Iowa Administrative Code rule 129—11.7(2), if pursued. In addition to the foregoing appeal bond, should an appeal proceed to a second-tier review, the Respondent initiating such appeal shall supply the Agency with an additional appeal security equal to 25 percent of total contract value. Such additional appeal security shall accompany the request for second tier review. Appellant forfeits an appeal bond or security if, as determined by the Agency, following resolution of the appeal, the appeal is determined to have had little or no factual or legal basis and was primarily filed to frustrate the procurement process or cause hardship for the Agency or another vendor. Failure to supply the Agency with an appeal bond or security required by this Section 2.28.2 (Appeal Bond/Security) shall result in dismissal of the appeal. An appeal bond or security may be by certified check, cashier's check, certificate of deposit, irrevocable letter of credit, bond, or other security acceptable to the Agency. These requirements will not be waived by the Agency.

2.29 Unit Price

If a discrepancy between the unit price and the item total exists, the unit price prevails.

2.30 Registration

The successful Bidder will be required to register to do business in Iowa before payment can be made. For vendor registration documents, go to:

https://vss.iowa.gov/webapp/VSS_ON/AltSelfService

SECTION 3 – BID REQUIREMENTS

All items listed in this Section are Bid Requirements. A successful Bidder must be able to satisfy all these requirements to be deemed a Responsible Bidder.

The contractor must:

- 3.1** Have at least three years' of experience providing website development and system support for payment portals.
- 3.2** Provide three references from previous website development and system support engagements.
- 3.3** Have demonstrated experience with actively remediating and improving application information security flaws within web sales portals.
- 3.4** Supply computers, software, and other necessary equipment required to provide remote website development and system support.
- 3.5** Supply a single point of contact for OCIO daily interaction – to provide status on website support, resolve issues, and/or other necessary interactions between OCIO and the Contractor.
- 3.6** Maintain compliance with Web Content Accessibility Guidelines (WCAG) 2.0 levels A and AA as Iowa's standard for website accessibility.
- 3.7** Maintain compliance with Iowa Enterprise Standards as outlined on OCIO's website (<https://ocio.iowa.gov/standards>).
- 3.8** Provide project documentation, including charters, requirements, user stories, project plans, project status, and technical specifications.
- 3.9** Provide regular status reports, which will include (but not be limited to) milestones, tasks completed, test results, risks, issues, planned and actual budget information.
- 3.10** Participate in routine and ad hoc meetings as requested by the Agency associated with planning, maintenance, oversight, performance and management of the Agency's sales portal.

SECTION 4 – SCOPE OF WORK

- 4.1** Develop Editable Shopping Cart Mechanic for Current ABD Shop Portal
 - 4.1.1** The customer adds items to their shopping cart as they do today.
 - 4.1.1.1** The basket management is dynamic until submission (with an option for admin set timeouts) and asynchronously checks against inventory levels to prevent orders on stocked out items and must accommodate different units of sales on a single product (case, bottle, split) at different prices respectively.
 - 4.1.1.2** Items are currently added either directly, by fast-key, or Excel sheet upload.
 - 4.1.2** They submit their cart as an order, similar to today.
 - 4.1.2.1** Order goes into a new holding area in Dynamics Warehouse, not the sales orders table yet.
 - 4.1.2.3** Shopping cart remains open in Shop Portal until an ABD defined date and time based on the customer delivery date.
 - 4.1.2.4** The customer is able to make changes to the shopping cart and changes are saved and communicated back to Dynamics Warehouse.
 - 4.1.2.4.1** Order must stay above the minimum dollar threshold.
 - 4.1.2.4.2** Items can be added or removed.
 - 4.1.2.4.3** Customer reconfirms shopping cart and changes are saved to Dynamics Warehouse.
 - 4.1.2.5** If a product stock level hits zero in Dynamics then a notice is sent to the Shop Portal and passed on to the customer letting them know a product on their order is out of stock.
 - 4.1.2.5.1** Recommend alternate products
 - 4.1.2.5.2** Remind the customer of their order cutoff date and time.
 - 4.1.2.6** Any special order or HA orders handled by ABD get added into the shopping cart.
 - 4.1.2.6.1** Do not let the customer remove those products from the cart.
- 4.2** On ABD defined cutoff time the order is finalized, moved out of the Dynamics holding area, sent to the Salesorder table, and then sent to JDA (Ruan). The time period between hitting the Salesorder table and going to JDA needs to be as short as possible.
 - 4.2.1** The process between ABD and Ruan does not change from here on.
- 4.3** Shop Portal sends notice to the customer that the order has been finalized and provides a list of all items that are included in the order. This does not replace the current invoice process.

- 4.4** Migrate Shop Portal site to updated server hosting environment with monthly costs broken down:
 - 4.4.1** Production Site Hosting Costs
 - 4.4.2** Backup Site Hosting Costs
 - 4.4.3** Monthly Site Maintenance Costs
 - 4.4.4** Quarterly Code Maintenance Costs
- 4.5** Upgrade the following site components:
 - 4.5.1** Migrate to PHP 8.x
 - 4.5.2** Update PHP Plugins
 - 4.5.3** Accessibility Update to WCAG 2.1 Level AA
 - 4.5.4** PCI Compliance Standards
 - 4.5.5** jQuery Update to 3.x
 - 4.5.6** Bootstrap Update to 5.x
- 4.6** Work with ABD and OCIO staff to design Shop Portal 2.0 to integrate with the new Microsoft Dynamics 365 warehouse system.

SECTION 5 - FORM OF BID

Instructions – Vendor is to complete the following. Fill out items with blanks. Indicate “yes” or “no” on items requesting agreement. If a “no” response is indicated, exceptions must be noted on Attachment 3.

5.1 Vendor Information

Business Name:	
Official Address:	
Firm's State or Foreign Country of Residence:	
Sales contact:	
Telephone Number:	
Fax Number:___	
Email:	

5.2 Bid

The Vendor listed in Section 5.1 above, in accordance with the bid requirements outlined in Section 3, hereby submits a Bid to perform the scope of work listed in Section 4 in the amount of

\$ _____

and further bids annual hosting and maintenance costs in the amount of

\$ _____ per year

Bidder acknowledges that bids will be evaluated on the basis of project cost plus five years' hosting and maintenance fees.

Bidder has read and agrees to this section: Yes No

5.3 Contract Terms and Conditions

The Contract(s) that the Agency expects to award as a result of this solicitation will be based upon the final Bid submitted by the successful Bidder and the solicitation. The Contract between the Agency and the successful Bidder shall be a combination of:

- the specifications, terms and conditions of the solicitation,
- the offer of the Bidder contained in the final Bid submitted by the Bidder,
- written clarifications or changes made in accordance with the provisions of the solicitation, and

- any other terms deemed necessary by the Agency, except that no objection or amendment by a Bidder to the provisions or terms and conditions of the solicitation shall be incorporated into the Contract unless the Agency has explicitly accepted the Bidder’s objection or amendment in writing.

The contract terms and conditions contained in Attachment 2 of this RFB document will be incorporated into the Contract.

The contract terms and conditions may be supplemented at the time of Contract execution and are provided to enable Bidders to better evaluate the costs associated with the solicitation requirements and the Contract. Bidders should plan on the contract terms and conditions contained in Attachment 2 being included in any contract awarded as a result of this solicitation. All costs associated with complying with these requirements should be included in any pricing quoted by the Bidder. By submitting a Bid, each Bidder acknowledges its acceptance of the solicitation terms and conditions without change except as otherwise expressly stated in the attachment. If a Bidder takes exception to a provision, it must state the reason for the exception and the specific contract language it proposes to include in place of the provision. Exceptions that materially change these terms or the requirements of the solicitation may be deemed non-responsive by the State, in its sole discretion, resulting in possible disqualification of the Bid. The Agency reserves the right to either award a Contract(s) without further negotiation with the successful Bidder or to negotiate contract terms with the selected Bidder if the best interests of the Agency would be served.

Bidder has read and agrees to this section: Yes No

5.4 Bid Requirements

Bidder is able to provide and perform as specified in Section 3. By indicating “yes”, a Bidder agrees that it shall comply with that requirement throughout the full term of the Resulting Contract, if the Bidder is successful. In addition, for specific requirements, the Bidder shall provide, if requested, specific references and/or supportive information to verify the Bidder’s compliance with the requirement. Failure to provide this information may cause the Bid to be deemed non-responsive and therefore rejected. The Agency reserves the right to determine whether the supportive information submitted by the Bidder demonstrates the Bidder will be able to comply with the Bid Requirements. If the Agency determines the supportive information does not demonstrate the Bidder will be able to comply with the Bid Requirements, the Agency may disqualify the Bid. Please enter the required information on the attachment and upload the document.

Bidder has read and agrees to this section: Yes No

5.5 Vendor Experience

The Bidder must provide the following information regarding its experience in a separate document:

- Number of years in business

- Number of years of experience with providing the types of goods and/or services sought by the solicitation.
- Describe the level of technical experience in providing the Types of goods and/or services sought by the solicitation.
- Provide contact information for three (3) previous customers or clients knowledgeable of the Bidder's performance in providing goods and/or services similar to the goods and/or services described in this solicitation.

5.6 Terminations, Litigation, Debarment

The Bidder must provide the following information in a separate document:

- During the last five (5) years, has the Bidder had a contract for goods and/or services terminated for any reason? If so, provide full details related to the termination.
- During the last five (5) years, describe any damages or penalties or settlements to resolve disputes entered into by Bidder under any of its existing or past contracts as it relates to goods and/or services performed that are similar to the goods and/or services contemplated by this RFB. If so, indicate the reason for the penalty or exchange of property, goods, or services and the estimated amount of the cost of that incident to the Bidder.
- During the last five (5) years, describe any order, judgment or decree of any Federal or State authority barring, suspending or otherwise limiting the right of the Bidder to engage in any business, practice or activity.
- During the last five (5) years, list and summarize all litigation or threatened litigation, administrative or regulatory proceedings, or similar matters to which the Bidder or its officers have been a party.
- The Bidder must also state whether it or any owners, officers, or primary partners have ever been convicted of a felony. Failure to disclose these matters may result in rejection of the Proposal or termination of any subsequent Contract.
- This is a continuing disclosure requirement. Any such matter commencing after submission of a Proposal, and with respect to the successful Bidder after the execution of a Contract, must be disclosed in a timely manner in a written statement to the Agency.

5.7 Personnel/Education

The Bidder must provide resumes for all key personnel who will be involved in providing the goods and/or services contemplated by this solicitation. The following information must be included in the resumes:

- Full Name
- Education and/or Certification
- Years of experience and employment history particularly as it relates to the requirements of the solicitation.

5.8 Preference

The Bidder shall provide the following general background information: For an out-of-state Bidder, Bidder certifies the Resident Preference given by the State or Foreign Country of Bidder's residence. Enter the resident preference in the text box or indicate no preference.

Vendor's state has a preference law: Yes No **Vendor's state** _____

5.9 Security and Compliance

The Bidder shall comply with all applicable State and federal laws, rules regulations, policies, and standards concerning the confidentiality and integrity of the existing system and all data stored or processed therein or thereby, including but not limited to:

- Standards and policies for system security as established by the State's Chief Information Officer. These standards and policies may be found at <https://ocio.iowa.gov/standards>.
- Payment Card Industry Data Security Standard (PCI DSS). These standards and policies may be found at https://www.pcisecuritystandards.org/document_library
- The Contractor will be required, on an ongoing basis, to certify Contractor's and the System's compliance with all applicable State and federal laws, regulations, standards, and policies concerning the confidentiality, integrity, and availability of proposed System as outlined in this section.
- Work at the direction of the Agency to implement, maintain, and support the portal upgrade in conformance with State and federal laws, regulations, standards, and policies as defined in this section, including working with the Agency, where it is in the best interests of the Agency and the State of Iowa, in seeking an obtaining any available waivers necessary from applicable governing entities or bodies where the system is determined to not comply with such laws, regulations, standards, and policies, or modifying the system to comply with such laws, regulations, standards, and policies where a waiver is not granted.
- The Contractor and the Portal must be compliant with, and enable and facilitate the Agency's and Customer Agencies' compliance with, applicable accessibility laws, rules, regulations, policies, and standards, including but not limited to:
 - Title II of the Americans with Disabilities Act and corresponding implementing regulations;
 - Sections 504 and 508 of the Rehabilitation Act of 1973, as amended, and corresponding implementing regulations;
 - The State of Iowa's Website Accessibility Standard, available at:
<https://ocio.iowa.gov/website-accessibility-standard>
 - Web Content Accessibility Guidelines (WCAG) 2.0 levels A and AA.
- Provides an Attestation of Compliance as a PCI Service Provider with a QSA Signature and then must maintain that compliance throughout the life of the contract.

- Submit all Contractor Personnel assigned to work on Agency or State systems or with access to State Data to all State and federal background checks and criminal investigations required by applicable law, rule, regulation, policy, or standard, including both prior to being granted access to any State Data and on an ongoing basis thereafter.
- Ensure that all employees, consultants, and external staff that work on the Agency’s portal project have signed general and specific confidentiality and privacy statements to protect confidential data, including those required by the State of Iowa and the Agency.
- Ensure all Contractor Personnel complete State of Iowa Security Awareness Training.
- Immediately report all confirmed and suspected security intrusions, Security Breaches, and incidents to the Agency upon detection.

Bidder has read and agrees to this section: Yes No

5.10 Silence of Specification

The apparent silence of these specifications as to any details or the omission from it of a detailed description concerning any point shall be interpreted as meaning that only the best commercial practices are to prevail, and that only materials and/or workmanship of finest quality shall be used.

Bidder has read and agrees to this section: Yes No

5.11 Award by Either Supplier or by Line

The Agency reserves the right to award to the supplier with the best overall price or to the supplier with the best line item price.

Bidder has read and agrees to this section: Yes No

5.12 Criminal History and Background Information

The Bidder hereby explicitly authorizes the Agency to conduct criminal history and/or other background investigation(s) of the Bidder, its officers, directors, shareholders, or partners and managerial and supervisory personnel retained by the Bidder for the performance of the Contract.

Bidder has read and agrees to this section: Yes No

5.13 Insurance

The Contract will require the successful Bidder to maintain insurance coverage(s) in accordance with the contractual provisions. Bidder shall, at its sole expense, maintain in full force and effect, with insurance companies admitted to do business in the State of Iowa and acceptable to the Agency, insurance covering its work of the type and in amounts required by this Contract. Bidder’s insurance shall, among other things, insure against any loss or damage resulting from or related to Bidder’s performance of this Contract regardless of the date the claim is filed or expiration of the policy. All insurance policies required by this Contract shall: (i) be subject to the

approval of the Agency; (ii) remain in full force and effect for the entire term of this Contract; and (iii) not be canceled, reduced or changed without the Agency’s prior written consent. The State of Iowa and Agency shall be named as additional insureds on all such policies, and all such policies shall include the following endorsement: “It is hereby agreed and understood that the State of Iowa and the Agency are named as additional insured, and that the coverage afforded to the State of Iowa and the Agency under this policy shall be primary insurance. If the State of Iowa or the Agency have other insurance which is applicable to a loss, such other insurance shall be on an excess, secondary or contingent basis. The amount of the insurer’s liability under this policy shall not be reduced by the existence of such other insurance.” Unless otherwise requested by the Agency, Bidder shall cause to be issued insurance policies with the coverages set forth below:

Type of Insurance	Limit	Amount
General Liability (including contractual liability) written on an occurrence basis	General Aggregate Products – Comp/Op Aggregate Personal injury Each Occurrence	\$2 million \$1 Million \$1 Million \$1 Million
Excess Liability, umbrella form	Each Occurrence Aggregate	\$1 Million \$1 Million
Errors and Omissions Insurance	Each Occurrence	\$1 Million
Property Damage	Each Occurrence Aggregate	\$1 Million \$1 Million
Workers Compensation and Employer Liability	As Required by Iowa law	As required by Iowa law

5.13.1 Certificates of Coverage

At the time of execution of this Contract, Bidder shall deliver to the Agency certificates of insurance certifying the types and the amounts of coverage, certifying that said insurance is in force before the Bidder starts work, certifying that said insurance applies to, among other things, the work, activities, products and liability of the Bidder related to this Contract, certifying that the State of Iowa and the Agency are named as additional insureds on the policies of insurance by endorsement as required herein, and certifying that no cancellation or modification of the insurance will be made without at least thirty (30) days prior written notice to the Agency. All certificates of insurance shall be subject to approval by the Agency. The Bidder shall simultaneously with the delivery of the certificates deliver to the Agency one duplicate original of each insurance policy. Liability of Bidder Acceptance of the insurance certificates by the Agency shall not act to relieve Bidder of any obligation under this Contract. It shall be the responsibility of Bidder to keep the respective insurance policies and coverages current and in force during the life of this Contract. Bidder shall be responsible for all premiums, deductibles and for any inadequacy, absence or limitation of coverage, and the Bidder shall have no claim or other recourse against the State or the Agency for any costs or loss attributable to any of the foregoing, all of which shall be borne solely by the Bidder. Notwithstanding any other provision of this Contract, Bidder shall be fully responsible and liable for meeting and fulfilling all of its obligations.

5.13.2 Waiver of Subrogation Rights

Bidder shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the Agency or the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the Agency. Filing of Claims In the event either the Agency or the State suffers a loss and is unable to file a claim under any policy of insurance required under this Contract, the Bidder shall, at the Agency’s request, immediately file a proper claim under such policy. Bidder will provide the Agency with proof of filing of any such claim and keep the Agency fully informed about the status of the claim. In addition, Bidder agrees to use its best efforts to pursue any such claim, to provide information and documentation requested by any insurer providing insurance required hereunder and to cooperate with the Agency and the State. Bidder shall pay to the Agency and the State any insurance proceeds or payments in receives in connection with any such claim immediately upon Bidder’s receipt of such proceeds or payments.

5.13.3 Proceeds

In the event the Agency or the State suffers a loss that may be covered under any of the insurance policies required, neither the Bidder nor any subsidiary or affiliate thereof shall have any right to receive or recover any payments or proceeds that may be made or payable under such policies until the Agency and/or the State have fully recovered any losses, damages or expenses sustained or incurred by it (subject to applicable policy limits), and Bidder hereby assigns to the Agency and the State all of its rights in and to any and all payments and proceeds that may be made or payable under each policy of insurance required under this Contract.

Bidder has read and agrees to this section: Yes No

5.14 Standard of Quality

The item(s) specified in this program by brand name are intended to establish a standard of quality, which will be required. Similar item or items of manufacturers other than those listed which are included in the bids submitted will be considered if comparable in quality and function. It will be the responsibility of the bidder to provide all technical information as to the acceptability of the alternate item(s). All products delivered shall be fully guaranteed to be free of defects, first quality no seconds or irregulars shall be accepted.

Bidder has read and agrees to this section: Yes No

5.15 Payment Terms

Per Iowa Code § 8A.514 the State of Iowa is allowed sixty (60) days to pay an invoice submitted by a vendor. What discount will you give for payment in 15 days? What discount will you give for payment in 30 days?

Bidder has read and agrees to this section: Yes No

5.16 Firm Contract Pricing

Any contract that results from this bid will have firm pricing for one year.

Bidder has read and agrees to this section: Yes No

5.17 Invoicing

All invoicing will be submitted to the attention of "Accounts Payable" and addressed to the facility receiving the goods or services. The State shall pay the vendor monthly, within the period

of time provided for by applicable State statute, after receipt of the Vendor's invoice for the goods and/or services supplied by the Vendor in the prior calendar month. The invoice will be itemized with a description of goods or services provided that corresponds directly to a line item on the Contractual Agreement or Master Agreement that results from this RFB. Each line should also list the quantity, unit of measure, price per unit of measure, line item totals and invoice total. The remit to address on the invoice must match the remit to address that was submitted with registration to do business with the State of Iowa. Payment terms on the invoice must match the payment terms agreed to in the bid submission.

Bidder has read and agrees to this section: Yes No

5.18 Best and Final Offers

The Issuing officer reserves the right to conduct discussions with Bidders for obtaining “best and final offers.” To obtain best and final offers from Bidders, the Issuing Officer may do one or more of the following: enter into pre-selection negotiations, including the use of an on-line auction; schedule oral presentations; and request revised proposals.

Bidder has read and agrees to this section: Yes No

5.19 Questions and Clarifications

Bidders are invited to submit written questions and requests for clarifications regarding the RFB. The questions and requests for clarifications must be received by the Issuing Officer, at the email address listed above. Questions will be accepted until TIME am/pm CST on MONTH DATE, YEAR. Oral questions will not be permitted. If the questions and requests for clarifications pertain to a specific section of the RFB, the page and section number(s) must be referenced. Written responses to questions and requests for clarifications will be responded to as they are submitted through the Iowa VSS system to all invited suppliers. In the event a correction to the bid is required, a formal addendum will be issued on or before TIME am/pm CST on MONTH DATE, YEAR to all invited suppliers.

Bidder has read and agrees to this section: Yes No

5.20 Pricing

Pricing must include all delivery, packaging and administrative costs including, but not limited to, any US import charges associated with the product. There shall be no minimum order quantities or total order amount required from the agency, by the Bidder. All bid pricing must be rounded to the nearest hundredth (0.00), US currency.

Bidder has read and agrees to this section: Yes No

**Attachment #1
Certification Letter**

Alterations to this document are prohibited.

(Date) _____

Steve Dawson, Issuing Officer
State of Iowa Office of the Chief Information Officer
200 E. Grand Ave.
Des Moines, IA 50309

Subject: Request for Bid - Proposal Certifications

Dear Issuing Officer:

I certify that the contents of the Bid submitted on behalf of **(Name of Bidder)**, in response to the State of Iowa Office of the Chief Information Officer for RFB #0921-185-01 for a Web Portal Upgrade, are true and accurate. I also certify that Bidder has not knowingly made any false statements in its Bid.

Certification of Independence

I certify that I am a representative of Bidder expressly authorized to make the following certifications on behalf of Bidder. By submitting a Bid in response to the RFB, I certify on behalf of the Bidder the following:

1. The Bid has been developed independently, without consultation, communication or agreement with any employee or consultant to the Agency or with any person serving as a member of the evaluation committee.
2. The Bid has been developed independently, without consultation, communication or agreement with any other Bidder or parties for the purpose of restricting competition.
3. Unless otherwise required by law, the information found in the Bidder has not been and will not be knowingly disclosed, directly or indirectly prior to Agency's issuance of the Notice of Intent to Award the contract.
4. No attempt has been made or will be made by Bidder to induce any other Bidder to submit or not to submit a Bid for the purpose of restricting competition.
5. No relationship exists or will exist during the contract period between Bidder and the Agency or any other State agency that interferes with fair competition or constitutes a conflict of interest.

Certification Regarding Debarment

I certify that, to the best of my knowledge, neither Bidder nor any of its principals: (a) are presently or have been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by a Federal Agency or State Agency; (b) have within a five year period preceding this Proposal been convicted of, or had a civil judgment rendered against them for commission of fraud, a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, violation of antitrust statutes; commission of embezzlement, theft, forgery, falsification or destruction of records, making false statements, or receiving stolen property; (c) are presently indicted for or criminally or civilly charged by a government entity (federal, state, or local) with the commission of any of the offenses enumerated in (b) of this certification; and (d) have not within a three year period preceding this Proposal had one or more public transactions (federal, state, or local) terminated for cause.

This certification is a material representation of fact upon which the Agency has relied upon when this transaction was entered into. If it is later determined that Bidder knowingly rendered an erroneous certification, in addition to other remedies available, the Agency may pursue available remedies including suspension, debarment, or termination of the contract.

Certification Regarding Registration, Collection, and Remission of Sales and Use Tax

Pursuant to *Iowa Code sections 423.2(10) and 423.5(8) (2013)* a retailer in Iowa or a retailer maintaining a business in Iowa that enters into a contract with a state agency must register, collect, and remit Iowa sales tax and Iowa use tax levied under *Iowa Code chapter 423* on all sales of tangible personal property and enumerated services. The Act also requires Bidders to certify their compliance with sales tax registration, collection, and remission requirements and provides potential consequences if the certification is false or fraudulent.

By submitting a Proposal in response to the (RFB), the Bidder certifies the following: (check the applicable box)

- Bidder is registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by *Iowa Code chapter 423*; or
- Bidder is not a “retailer” or a “retailer maintaining a place of business in this state” as those terms are defined in *Iowa Code subsections 423.1(47) and (48)*.

Bidder also acknowledges that the Agency may declare the Bidder’s Bid or any resulting contract void if the above certification is false. The Bidder also understands that fraudulent certification may result in the Agency or its representative filing for damages for breach of contract in addition to other remedies available to the Agency.

Sincerely,

Signature

Name and Title of Authorized Representative

Date

Attachment #2
General Terms and Conditions for IT Service Contracts/Solicitations

1.1 Definitions

The following words shall be defined as set forth below:

“Acceptance” means that the Agency has determined that one or more Deliverables satisfy the Agency’s Acceptance Tests. Final Acceptance means that the Agency has determined that all Deliverables satisfy the Agency’s Acceptance Tests. Non-acceptance means that the Agency has determined that one or more Deliverables have not satisfied the Agency’s Acceptance Tests.

“Acceptance Criteria” means the Specifications, goals, performance measures, testing results and/or other criteria designated by the Agency and against which the Deliverables may be evaluated for purposes of Acceptance or Non-acceptance thereof.

“Acceptance Tests” or “Acceptance Testing” mean the tests, reviews and other activities that are performed by or on behalf of Agency to determine whether the Deliverables meet the Acceptance Criteria or otherwise satisfy the Agency, as determined by the Agency in its sole discretion.

“Bid Proposal” or “Proposal” means the Contractor’s proposal submitted in response to the RFB.

“Breach of security” or “Security Breach” as defined in Iowa Code 715C.1 means unauthorized acquisition of personal information maintained in computerized form by a person that compromises the security, confidentiality, or integrity of the personal information. Good faith acquisition of personal information by a person or that person’s employee or agent for a legitimate purpose of that person is not a breach of security, provided that the personal information is not used in violation of applicable law or in a manner that harms or poses an actual threat to the security, confidentiality, or integrity of the personal information.

“Contract” means the collective documentation memorializing the terms of the agreement between the Agency and the Contractor identified on the Contract Declarations & Execution Page(s) and includes the signed Contract Declarations & Execution Page(s), the Special Terms, these General Terms for IT Services Contracts, any Special Contract Attachments, and all other attachments to the Contract Declarations & Execution Page(s).

“Contract Declarations & Execution Page(s)” means the document that contains basic information about the Contract and incorporates by reference these General Terms for IT Services Contracts, the Special Terms, and all other attachments to the Contract Declarations and Executions Page(s).

“Deficiency” means a defect, flaw, anomaly, failure, omission, interruption of service, or other

problem of any nature whatsoever with respect to a Deliverable, including, without limitation, any failure of a deliverable to conform to or meet an applicable specification. Deficiency also includes the lack of something essential or necessary for completeness or proper functioning of a Deliverable.

“Deliverables” means all of the goods, products, services, work, work product, items, materials and property to be created, developed, produced, delivered, performed or provided by or on behalf of, or made available through, Contractor (or any agent, contractor or subcontractor of Contractor) in connection with this Contract.

“Documentation” means any and all technical information, commentary, explanations, design documents, system architecture documents, database layouts, test materials, training materials, guides, manuals, worksheets, notes, work papers, and all other information, documentation and materials related to or used in conjunction with the Deliverables, in any medium, including hard copy, electronic, digital, and magnetically or optically encoded media.

“Governmental Entity” shall mean any Governmental Entity, as defined in Iowa Code Section 8A.101(4), or any successor provision to that section. The term Governmental Entity shall include Iowa agencies, independent agencies, departments, boards, authorities, institutions, establishments, divisions, bureaus, commissions, committees, councils, examining boards, offices of elective constitutional or statutory officers, and other units or entities of government. Governmental Entity, for the purposes of this contract, also means other governmental entities in other states in the United States outside of the State of Iowa.

“Non-Public Data” means data, other than personal data, that is not subject to distribution to the public as public information as defined as a Confidential Record by Iowa Code Section 22.7. It is deemed to be sensitive and confidential by the State because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.

“Personal Data” means data that includes information relating to a person that identifies the person by name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver’s license, passport); financial account information, including account number, credit or debit card numbers; or protected health information (PHI) relating to a person.

“RFB” means the Request for Bids (and any Addenda thereto) identified on the Contracts Declarations and Execution Page(s) that was issued to solicit the Deliverables that are subject to the Contract.

“Security Incident” means the potentially unauthorized access by non-authorized persons to personal data or non-public data the Contractor believes could reasonably result in the use, disclosure or theft of a State’s unencrypted personal data or non-public data within the possession or control of the Contractor. A security incident may or may not turn into a security breach.

“Special Contract Attachments” means any attachment to this Contract indicated on the Contract Declarations & Execution Page(s).

“Special Terms” means the Contract attachment entitled “Special Terms” that contains terms specific to this Contract, including but not limited to the Scope of Work, contract payment terms, and any amendments to these General Terms and Conditions for Services Contracts. If there is a conflict between the General Terms for IT Services Contracts and the Special Terms, the Special Terms shall prevail.

“Specifications” means all specifications, requirements, technical standards, performance standards, representations and other criteria related to the Deliverables stated or expressed in this Contract, the Documentation, the RFB, and the Proposal. Specifications shall include the Acceptance Criteria and any specifications, standards or criteria stated or set forth in any applicable state, federal, foreign and local laws, rules and regulations. The Specifications are incorporated into this Contract by reference as if fully set forth in this Contract.

“State” means the State of Iowa, the Agency, and all State of Iowa agencies, boards, and commissions, and when this Contract is available to political subdivisions, any political subdivisions of the State of Iowa.

“State Data” means all data created or in any way originating with the State, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in any way originated with the State, whether such data or output is stored on the State’s hardware, the Contractor’s hardware or exists in any system owned, maintained or otherwise controlled by the State or by the Contractor.

“State Identified Contact” means the Office of the Chief Information Officer’s Chief Information Security Officer (CISO).

1.2 Availability of Contract to Other Entities

All other agencies of the State of Iowa and all political subdivisions of the State of Iowa may make purchases pursuant to the Contract as permitted by the Competitive Bidding Document.

1.3 Duration of Contract

The term of the Contract shall begin and end on the dates specified on the Contract Declarations & Execution Page(s), unless extended or terminated earlier in accordance with the termination provisions of this Contract. The Agency may, in its sole discretion, exercise any applicable extension by giving the Contractor written notice of the extension prior to the expiration of the initial term or renewal term.

1.4 Scope of Work

The Contractor shall provide Deliverables that comply with and conform to the Specifications.

1.5 **Compensation**

1.5.1 **Pricing**

The Contractor will be compensated in accordance with the payment terms outlined in the Contract Payment Terms and Scope of Work described in the Special Terms. The Contractor shall submit, on the frequency established on the Contract Declarations & Execution Page(s) an invoice for Deliverables rendered in accordance with this Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The Agency shall verify the Contractor's performance of the Deliverables outlined in the invoice before making payment. The Agency shall pay all approved invoices in arrears and in conformance with Iowa Code 8A.514. The Agency may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code § 8A.514.

Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State for any Deliverables provided by or on behalf of the Contractor under this Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under this Contract.

1.5.2 **The State has established rules for limitations on reimbursement expenses**

Please reference Department of Administrative Services - State Accounting Enterprise Procedure 210-245 (accessible on the internet) for limits on travel expenses.

1.5.3 **Withholding Payments**

In addition to pursuing any other remedy provided herein or by law, the Agency may withhold compensation or payments to Contractor, in whole or in part, without penalty to the Agency or work stoppage by Contractor, in the event the Agency determines that:

1.5.3.1 Contractor has failed to perform any of its duties or obligations as set forth in this Contract; or

1.5.3.2 Any Deliverable has failed to meet or conform to any applicable Specifications or contains or is experiencing a Deficiency.

No interest shall accrue or be paid to Contractor on any compensation or other amounts withheld or retained by the Agency under this Contract.

1.5.4 **Setoff Against Sums Owed by the Contractor**

In the event that Contractor owes the State any sum under the terms of this Contract, any other contract or agreement, pursuant to a judgment, or pursuant to any law, the State may, in its sole discretion, set off any such sum against:

1.5.4.1 Any sum invoiced by, or owed to, Contractor under this Contract, or

1.5.4.2 Any sum or amount owed by the State to Contractor, unless otherwise required by law.

The Contractor agrees that this provision constitutes proper and timely notice under any applicable laws governing setoff.

1.6 Termination

1.6.1 Immediate Termination by the State

The State may terminate this Contract for any of the following reasons effective immediately without advance notice:

- 1.6.1.1 In the event the Contractor is required to be certified or licensed as a condition precedent to providing goods and services, the revocation or loss of such license or certification will result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;
- 1.6.1.2 The State determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, a person's life, health or safety to be jeopardized;
- 1.6.1.3 The Contractor fails to comply with confidentiality laws or provisions;
- 1.6.1.4 The Contractor furnished any statement, representation or certification in connection with the Contract or the bidding process which is materially false, deceptive, incorrect or incomplete.

1.6.2 Termination for Cause by the Agency

The Agency may terminate this Contract upon written notice for the breach by Contractor of any material term, condition or provision of this Contract, if such breach is not cured within the time period specified in the Agency's notice of breach or any subsequent notice or correspondence delivered by the Agency to Contractor, provided that cure is feasible. In addition, the Agency may terminate this Contract effective immediately without penalty and without advance notice or opportunity to cure for any of the following reasons:

- 1.6.2.1 Contractor furnished any statement, representation, warranty or certification in connection with this Contract, the RFB or the Proposal that is false, deceptive, or materially incorrect or incomplete;
- 1.6.2.2 Contractor or any of Contractor's officers, directors, employees, agents, subsidiaries, affiliates, contractors or subcontractors has committed or engaged in fraud, misappropriation, embezzlement, malfeasance, misfeasance, or bad faith;
- 1.6.2.3 Contractor or any parent or affiliate of Contractor owning a controlling interest in Contractor dissolves;
- 1.6.2.4 Contractor terminates or suspends its business;

- 1.6.2.5 Contractor's corporate existence or good standing in Iowa is suspended, terminated, revoked or forfeited, or any license or certification held by Contractor related to Contractor's performance under this Contract is suspended, terminated, revoked, or forfeited;
- 1.6.2.6 Contractor has failed to comply with any applicable international, federal, state (including, but not limited to Iowa Code chapter 8F), or local laws, rules, ordinances, regulations or orders when performing within the scope of this Contract;
- 1.6.2.7 The Agency determines or believes the Contractor has engaged in conduct that: (a) has or may expose the Agency or the State to material liability, or (b) has caused or may cause a person's life, health or safety to be jeopardized;
- 1.6.2.8 Contractor infringes or allegedly infringes or violates any patent, trademark, copyright, trade dress or any other intellectual property right or proprietary right, or Contractor misappropriates or allegedly misappropriates a trade secret;
- 1.6.2.9 Contractor fails to comply with any applicable confidentiality laws, privacy laws, or any provisions of this Contract pertaining to confidentiality or privacy; or
- 1.6.2.10 Any of the following has been engaged in by or occurred with respect to Contractor or any corporation, shareholder or entity having or owning a controlling interest in Contractor:
 - 1.6.2.10.1 Commencing or permitting a filing against it which is not discharged within ninety (90) days, of a case or other proceeding seeking liquidation, reorganization, or other relief with respect to itself or its debts under any bankruptcy, insolvency, or other similar law now or hereafter in effect; or filing an answer admitting the material allegations of a petition filed against it in any involuntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts; or consenting to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it seeking liquidation, reorganization, or other relief under any bankruptcy, insolvency, or other similar law now or hereafter in effect with respect to it or its debts;
 - 1.6.2.10.2 Seeking or suffering the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its assets;
 - 1.6.2.10.3 Making an assignment for the benefit of creditors;

1.6.2.10.4 Failing, being unable, or admitting in writing the inability generally to pay its debts or obligations as they become due or failing to maintain a positive net worth and such additional capital and liquidity as is reasonably adequate or necessary in connection with Contractor's performance of its obligations under this Contract; or

1.6.2.10.5 Taking any action to authorize any of the foregoing. The Agency's right to terminate this Contract shall be in addition to and not exclusive of other remedies available to the Agency, and the Agency shall be entitled to exercise any other rights and pursue any remedies, in law, at equity, or otherwise.

1.6.3 **Termination upon Notice**

Following thirty (30) days written notice, the Agency may terminate this Contract in whole or in part without penalty and without incurring any further obligation to Contractor. Termination can be for any reason or no reason at all.

1.6.4 **Termination Due to Lack of Funds or Change in Law**

Notwithstanding anything in this Contract to the contrary, and subject to the limitations set forth below, the Agency shall have the right to terminate this Contract without penalty and without any advance notice as a result of any of the following:

1.6.4.1 The legislature or governor fail in the sole opinion of the Agency to appropriate funds sufficient to allow the Agency to either meet its obligations under this Contract or to operate as required and to fulfill its obligations under this Contract; or

1.6.4.2 If funds are de-appropriated, reduced, not allocated, or receipt of funds is delayed, or if any funds or revenues needed by the Agency to make any payment hereunder are insufficient or unavailable for any other reason as determined by the Agency in its sole discretion; or

1.6.4.3 If the Agency's authorization to conduct its business or engage in activities or operations related to the subject matter of this Contract is withdrawn or materially altered or modified; or

1.6.4.4 If the Agency's duties, programs or responsibilities are modified or materially altered; or

1.6.4.5 If there is a decision of any court, administrative law judge or an arbitration panel or any law, rule, regulation or order is enacted, promulgated or issued that materially or adversely affects the Agency's ability to fulfill any of its obligations under this Contract. The Agency shall provide Contractor with written notice of termination pursuant to this section.

1.6.5 **Limitation of the State's Payment Obligations**

In the event of termination of this Contract for any reason by either party (except for termination by the Agency pursuant to Section 1.6.2), the Agency shall pay only those amounts, if any, due and owing to Contractor hereunder for Deliverables actually and

satisfactorily provided in accordance with the provisions of this Contract up to and including the date of termination of this Contract and for which the Agency is obligated to pay pursuant to this Contract; provided however, that in the event the Agency terminates this Contract pursuant to Section 1.6.4, the Agency's obligation to pay Contractor such amounts and other compensation shall be limited by, and subject to, legally available funds. Payment will be made only upon submission of invoices and proper proof of Contractor's claim. Notwithstanding the foregoing, this Section 1.6.5 in no way limits the rights or remedies available to the Agency and shall not be construed to require the Agency to pay any compensation or other amounts hereunder in the event of Contractor's breach of this Contract or any amounts withheld by the Agency in accordance with the terms of this Contract. The Agency shall not be liable, under any circumstances, for any of the following:

- 1.6.5.1 The payment of unemployment compensation to Contractor's employees;
- 1.6.5.2 The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;
- 1.6.5.3 Any costs incurred by Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract;
- 1.6.5.4 Any damages or other amounts associated with the loss of prospective profits, anticipated sales, goodwill, or for expenditures, investments or commitments made in connection with this Contract;
- 1.6.5.5 Any taxes Contractor may owe in connection with the performance of this Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

1.6.6 Contractor's Termination Duties

Upon receipt of notice of termination or upon request of the Agency, Contractor shall:

- 1.6.6.1 Cease work under this Contract and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work performed under the Contract and such other matters as the Agency may require.
- 1.6.6.2 Immediately cease using and return to the Agency any property or materials, whether tangible or intangible, provided by the Agency to Contractor.
- 1.6.6.3 Cooperate in good faith with the Agency and its employees, agents and independent contractors during the transition period between the notification of termination and the substitution of any replacement service provider.
- 1.6.6.4 Immediately return to the Agency any payments made by the Agency for Deliverables that were not rendered or provided by Contractor.

1.6.6.5 Immediately deliver to the Agency any and all Deliverables for which the Agency has made payment (in whole or in part) that are in the possession or under the control of the Contractor or its agents or subcontractors in whatever stage of development and form of recordation such property is expressed or embodied as that time.

1.6.7 Termination for Cause by Contractor

Contractor may only terminate this Contract for the breach by the Agency of any material term, condition or provision of this Contract, if such breach is not cured within sixty (60) days of the Agency's receipt of Contractor's written notice of breach.

1.7 Confidential Information

1.7.1 Access to Confidential Information

The Contractor's employees, agents and subcontractors may have access to confidential information maintained by the Agency to the extent necessary to carry out its responsibilities under the Contract. The Contractor shall presume that all information received pursuant to this Contract is confidential unless otherwise designated by the Agency. The Contractor shall provide to the Agency a written description of its policies and procedures to safeguard confidential information. Policies of confidentiality shall address, as appropriate, information conveyed in verbal, written, and electronic formats. The Contractor must designate one individual who shall remain the responsible authority in charge of all data collected, used, or disseminated by the Contractor in connection with the performance of the Contract. The Contractor shall provide adequate supervision and training to its agents, employees and subcontractors to ensure compliance with the terms of this Contract. The private or confidential information shall remain the property of the Agency at all times.

1.7.2 No Dissemination of Confidential information

No confidential information collected, maintained, or used in the course of performance of the Contract shall be disseminated by Contractor except as authorized by law and only with the prior written consent of the Agency, either during the period of the Contract or thereafter. Any data supplied by the Agency to the Contractor or created by the Contractor in the course of the performance of this Contract shall be considered the property of the Agency. The Contractor must return any and all data collected, maintained, created or used in the course of the performance of the Contract in whatever form it is maintained promptly at the request of the Agency. The Contractor may be held civilly or criminally liable for improper disclosure of confidential information.

1.7.3 Subpoena

In the event that a subpoena or other legal process is served upon the Contractor for records containing confidential information, the Contractor shall promptly notify the Agency and cooperate with the Agency in any lawful effort to protect the confidential information.

1.7.4 Reporting of Unauthorized Disclosure

The Contractor shall immediately report to the Agency any unauthorized disclosure of confidential information.

1.7.5 If Contractor requests confidential treatment with respect to any information or material contained within its Bid Proposal and if a judicial or administrative proceeding is initiated to compel the release of such material, Contractor shall, at its sole expense, appear in the proceeding or otherwise obtain an order restraining the release of such material from a court of competent jurisdiction. Agency may release the information or material with or without advance notice to Contractor if no judicial or administrative proceeding is initiated and Agency determines the information or material is not confidential under Iowa or other applicable law, or if Contractor failed to properly request confidential treatment under the RFB, or if Contractor rescinds its request for confidential treatment.

1.7.6 Survives Termination

The Contractor's obligations under this section shall survive termination or expiration of this Contract.

1.8 Indemnification**1.8.1 By the Contractor**

The Contractor agrees to indemnify and hold harmless the State and its officers, appointed and elected officials, board and commission members, employees, volunteers and agents (collectively the "Indemnified Parties"), from any and all costs, expenses, losses, claims, damages, liabilities, settlements and judgments (including, without limitation, the reasonable value of the time spent by the Attorney General's Office, and the costs, expenses and attorneys' fees of other counsel retained by the Indemnified Parties directly or indirectly related to, resulting from, or arising out of this Contract, including but not limited to any claims related to, resulting from, or arising out of:

1.8.1.1 Any breach of this Contract;

1.8.1.2 Any negligent, intentional or wrongful act or omission of the Contractor or any agent or subcontractor utilized or employed by the Contractor;

1.8.1.3 The Contractor's performance or attempted performance of this Contract, including any agent or subcontractor utilized or employed by the Contractor;

1.8.1.4 Any failure by the Contractor to make all reports, payments and withholdings required by federal and state law with respect to social security, employee income and other taxes, fees or costs required by the Contractor to conduct business in the State of Iowa;

1.8.1.5 Any claim of misappropriation of a trade secret or infringement or violation of any intellectual property rights, proprietary rights or personal rights of any third party, including any claim that any Deliverable or any use thereof

(or the exercise of any rights with respect thereto) infringes, violates or misappropriates any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other intellectual property right or proprietary right of any third party.

1.8.2 Survives Termination.

Contractor's duties and obligations under this section shall survive the termination of this Contract and shall apply to all acts or omissions taken or made in connection with the performance of this Contract regardless of the date any potential claim is made or discovered by the Agency or any other Indemnified Party.

1.9 Insurance

1.9.1 Insurance Requirements

The Contractor, and any subcontractor, shall maintain in full force and effect, with insurance companies licensed by the State of Iowa, at the Contractor's expense, insurance covering its work during the entire term of this Contract and any extensions or renewals thereof. The Contractor's insurance shall, among other things, be occurrence based and shall insure against any loss or damage resulting from or related to the Contractor's performance of this Contract regardless of the date the claim is filed or expiration of the policy. The State of Iowa and the Agency shall be named as additional insureds or loss payees, or the Contractor shall obtain an endorsement to the same effect, as applicable.

1.9.2 Types and Amounts of Insurance Required

Unless otherwise requested by the Agency in writing, the Contractor shall cause to be issued insurance coverages insuring the Contractor and/or subcontractors against all general liabilities, product liability, personal injury, property damage, and (where applicable) professional liability in the amount specified on the Contract Declarations and Execution Page for each occurrence. In addition, the Contractor shall ensure it has any necessary workers' compensation and employer liability insurance as required by Iowa law.

1.9.3 Certificates of Coverage

Contractor shall maintain all insurance policies required by this Contract in full force and effect during the entire term of this Contract and any extensions or renewals thereof, and shall not permit such policies to be canceled or amended except with the advance written approval of the Agency. The Contractor shall submit certificates of the insurance, which indicate coverage and notice provisions as required by this Contract, to the Agency upon execution of this Contract. The certificates shall be subject to approval by the Agency. The insurer shall state in the certificate that no cancellation of the insurance will be made without at least thirty (30) days' prior written notice to the Agency. Approval of the insurance certificates by the Agency shall not relieve the Contractor of any obligation under this Contract.

1.9.4 Waiver of Subrogation Rights

The Contractor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the State.

1.10 Project Management & Reporting

1.10.1 Project Manager

At the time of execution of this Contract, each party shall designate, in writing, a Project Manager to serve until the expiration of this Contract or the designation of a substitute Project Manager. During the term of this Contract, each Project Manager shall be available to meet monthly, unless otherwise mutually agreed, to review and plan the Deliverables being provided under this Contract.

1.10.2 Review Meetings

During the review meetings the Project Managers shall discuss progress made by the Contractor in the performance of this Contract. Each party shall provide a status report, as desired by a Project Manager, listing any problem or concern encountered since the last meeting. Records of such reports and other communications issued in writing during the course of Contract performance shall be maintained by each party.

1.10.3 Reports

At the next scheduled meeting after which any party has identified in writing a problem, the party responsible for resolving the problem shall provide a report setting forth activities undertaken, or to be undertaken, to resolve the problem, together with the anticipated completion dates of such activities. Any party may recommend alternative courses of action or changes that will facilitate problem resolution. For as long as a problem remains unresolved, written reports shall identify:

1.10.3.1 Any event not within the control of the Contractor or the Agency that accounts for the problem;

1.10.3.2 Modifications to the Contract agreed to by the parties in order to remedy or solve the identified problem;

1.10.3.3 Damages incurred as a result of any party's failure to perform its obligations under this Contract; and

1.10.3.4 Any request or demand by one party that another party believes is not included within the terms of this Contract.

1.10.4 Problem Reporting Omissions

The Agency's acceptance of a problem report shall not relieve the Contractor of any obligation under this Contract or waive any other remedy under this Contract or at law or equity that the Agency may have. The Agency's failure to identify the extent of a problem or the extent of damages incurred as a result of a problem shall not act as a waiver of performance or damages under this Contract. Where other provisions of this Contract require notification of an event in writing, the written report shall be considered a valid notice under this Contract provided the parties required to receive notice are notified.

1.10.5 Change Order Procedure

The Agency may at any time request a modification to the Scope of Work using a change order. The following procedures for a change order shall be followed:

- 1.10.5.1 Written Request: The Agency shall specify in writing the desired modifications to the same degree of specificity as in the original Scope of Work.
- 1.10.5.2 The Contractor's Response: The Contractor shall submit to the Agency a firm cost proposal for the requested change order within five (5) business days of receiving the change order request.
- 1.10.5.3 Acceptance of the Contractor Estimate: If the Agency accepts the cost proposal presented by the Contractor, the Contractor shall provide the modified Deliverable subject to the cost proposal included in the Contractor response. The Contractor's provision of the modified deliverables shall be governed by the terms and conditions of this Contract.
- 1.10.5.4 Adjustment to Compensation: The parties acknowledge that a change order for this Contract may or may not entitle the Contractor to an equitable adjustment in the Contractor's compensation or the performance deadlines under this Contract.

1.11 Legislative Changes

The Contractor expressly acknowledges that the contracted Deliverables are subject to legislative change by either the federal or state government. Should either legislative body enact measures which alter the project, the Contractor shall not hold the Agency liable in any manner for the resulting changes. The Agency shall use best efforts to provide thirty (30) days' written notice to the Contractor of any legislative change. During the thirty (30)-day period, the parties shall meet and make a good faith effort to agree upon changes to the Contract to address the legislative change. Nothing in this Subsection shall affect or impair the Agency's right to terminate the Contract pursuant to the termination provisions.

1.12 Intellectual Property

1.12.1 Ownership and Assignment of Other Deliverables

Contractor agrees that the State and Agency shall become the sole and exclusive owners of all Deliverables. Contractor hereby irrevocably assigns, transfers and conveys to the State and the Agency all right, title and interest in and to all Deliverables and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables, including copyrights, patents, trademarks, trade secrets, trade dress, mask work, utility design, derivative works, and all other rights and interests therein or related thereto. Contractor represents and warrants that the State and the Agency shall acquire good and clear title to all Deliverables, free from any claims, liens, security interests, encumbrances, intellectual property rights, proprietary rights, or other rights or interests of Contractor or of any third party, including any employee, agent, contractor, subcontractor, subsidiary or affiliate of Contractor. The Contractor (and Contractor's employees, agents, contractors, subcontractors, subsidiaries and affiliates) shall not retain any property interests or other rights in and to the Deliverables and shall not use any Deliverables, in whole or in part, for any purpose, without the prior written consent of the Agency

and the payment of such royalties or other compensation as the Agency deems appropriate. Unless otherwise requested by Agency, upon completion or termination of this Contract, Contractor will immediately turn over to Agency all Deliverables not previously delivered to Agency, and no copies thereof shall be retained by Contractor or its employees, agents, subcontractors or affiliates, without the prior written consent of Agency.

1.12.2 Waiver

To the extent any of Contractor's rights in any Deliverables are not subject to assignment or transfer hereunder, including any moral rights and any rights of attribution and of integrity, Contractor hereby irrevocably and unconditionally waives all such rights and enforcement thereof and agrees not to challenge the State's rights in and to the Deliverables.

1.12.3 Further Assurances

At the Agency's request, Contractor will execute and deliver such instruments and take such other action as may be requested by the Agency to establish, perfect or protect the State's rights in and to the Deliverables and to carry out the assignments, transfers and conveyances set forth in this Contract.

1.13 Warranties

1.13.1 Construction of Warranties Expressed in this Contract with Warranties Implied by Law

Warranties made by the Contractor in this Contract, whether: (1) this Contract specifically denominates the Contractor's promise as a warranty; or (2) the warranty is created by the Contractor's affirmation or promise, by a description of the Deliverables to be provided, or by provision of samples to the Agency, shall not be construed as limiting or negating any warranty provided by law, including without limitation, warranties that arise through course of dealing or usage of trade. The warranties expressed in this Contract are intended to modify the warranties implied by law only to the extent that they expand the warranties applicable to the Deliverables provided by the Contractor. The provisions of this section apply during the term of this Contract and any extensions or renewals thereof.

1.13.2 Contractor represents and warrants that: (1) all Deliverables shall be wholly original with and prepared solely by Contractor; or it owns, possesses, holds, and has received or secured all rights, permits, permissions, licenses and authority necessary to provide the Deliverables to the Agency hereunder and to assign, grant and convey the rights, benefits, licenses and other rights assigned, granted or conveyed to the Agency hereunder or under any license agreement related hereto without violating any rights of any third party; (2) Contractor has not previously and will not grant any rights in any Deliverables to any third party that are inconsistent with the rights granted to the Agency herein; and (3) the Agency shall peacefully and quietly have, hold, possess, use and enjoy the Deliverables without suit, disruption or interruption.

1.13.3 Contractor represents and warrants that: (1) the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables); and (2) the Agency's use of, and exercise of any rights with respect to,

the Deliverables (and all intellectual property rights and proprietary rights arising out of, embodied in, or related to such Deliverables), do not and will not, under any circumstances, misappropriate a trade secret or infringe upon or violate any copyright, patent, trademark, trade dress or other intellectual property right, proprietary right or personal right of any third party. Contractor further represents and warrants there is no pending or threatened claim, litigation or action that is based on a claim of infringement or violation of an intellectual property right, proprietary right or personal right or misappropriation of a trade secret related to the Deliverables. Contractor shall inform the Agency in writing immediately upon becoming aware of any actual, potential or threatened claim of or cause of action for infringement or violation of an intellectual property right, proprietary right, or personal right or misappropriation of a trade secret. If such a claim or cause of action arises or is likely to arise, then Contractor shall, at the Agency's request and at the Contractor's sole expense: (1) procure for the Agency the right or license to continue to use the Deliverable at issue; (2) replace such Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; (3) modify or replace the affected portion of the Deliverable with a functionally equivalent or superior Deliverable free of any such infringement, violation or misappropriation; or (4) accept the return of the Deliverable at issue and refund to the Agency all fees, charges and any other amounts paid by the Agency with respect to such Deliverable. In addition, Contractor agrees to indemnify, defend, protect and hold harmless the State and its officers, directors, employees, officials and agents as provided in the Indemnification section of this Contract, including for any breach of the representations and warranties made by Contractor in this section. The foregoing remedies shall be in addition to and not exclusive of other remedies available to the Agency and shall survive termination of this Contract.

- 1.13.4 **Contractor represents and warrants that the Deliverables (in whole and in part) shall:** (1) be free from material Deficiencies; and (2) meet, conform to and operate in accordance with all Specifications and in accordance with this Contract during the Warranty Period, as defined in the Special Terms. During the Warranty Period Contractor shall, at its expense, repair, correct or replace any Deliverable that contains or experiences material Deficiencies or fails to meet, conform to or operate in accordance with Specifications within five business days of receiving notice of such Deficiencies or failures from the Agency or within such other period as the Agency specifies in the notice. In the event Contractor is unable to repair, correct or replace such Deliverable to the Agency's satisfaction, Contractor shall refund the fees or other amounts paid for the Deliverables and for any services related thereto. The foregoing shall not constitute an exclusive remedy under this Contract, and the Agency shall be entitled to pursue any other available contractual, legal or equitable remedies. Contractor shall be available at all reasonable times to assist the Agency with questions, problems and concerns about the Deliverables, to inform the Agency promptly of any known Deficiencies in any Deliverables, repair and correct any Deliverables not performing in accordance with the warranties contained in this Contract, notwithstanding that such Deliverable may have been accepted by the Agency, and provide the Agency with all necessary materials with respect to such repaired or corrected Deliverable.

- 1.13.5 **Contractor represents, warrants and covenants** that all services to be performed under this Contract shall be performed in a professional, competent, diligent and workmanlike manner by knowledgeable, trained and qualified personnel, all in accordance with the terms and Specifications of this Contract and the standards of performance considered generally acceptable in the industry for similar tasks and projects. In the absence of a Specification for the performance of any portion of this Contract, the parties agree that the applicable specification shall be the generally accepted industry standard. So long as the Agency notifies Contractor of any services performed in violation of this standard, Contractor shall re-perform the services at no cost to the Agency, such that the services are rendered in the above-specified manner, or if the Contractor is unable to perform the services as warranted, Contractor shall reimburse the Agency any fees or compensation paid to Contractor for the unsatisfactory services.
- 1.13.6 **Contractor represents and warrants** that the Deliverables will comply with any applicable federal, state, foreign and local laws, rules, regulations, codes, and ordinances in effect during the term of this Contract, including applicable provisions of Section 508 of the Rehabilitation Act of 1973, as amended, and all standards and requirements established by the Architectural and Transportation Barriers Access Board, the Iowa Department of Administrative Services, and Iowa Office of the Chief Information Officer.
- 1.13.7 **Obligations Owed to Third Parties**
The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to this Contract are or will be fully satisfied by the Contractor so that the Agency will not have any obligations with respect thereto.
- 1.14 **Acceptance Testing**
Except as otherwise specified in the Scope of Work, all Deliverables shall be subject to the Agency's Acceptance Testing and Acceptance, unless otherwise specified in the Statement of Work. Upon completion of all work to be performed by Contractor with respect to any Deliverable, Contractor shall deliver a written notice to the Agency certifying that the Deliverable meets and conforms to applicable Specifications and is ready for the Agency to conduct Acceptance Tests; provided, however, that Contractor shall pretest the Deliverable to determine that it meets and operates in accordance with applicable Specifications prior to delivering such notice to the Agency. At the Agency's request, Contractor shall assist the Agency in performing Acceptance Tests at no additional cost to the Agency. Within a reasonable period of time after the Agency has completed its Acceptance Testing, the Agency shall provide Contractor with written notice of Acceptance or Non-acceptance with respect to each Deliverable that was evaluated during such Acceptance Testing. If the Agency determines that a Deliverable satisfies its Acceptance Tests, the Agency shall provide Contractor with notice of Acceptance with respect to such Deliverable. If the Agency determines that a Deliverable fails to satisfy its Acceptance Tests, the Agency shall provide Contractor with notice of Non-acceptance with respect to such Deliverable. In the event the Agency provides notice of Non-acceptance to Contractor with respect to any Deliverable, Contractor shall

correct and repair such Deliverable and submit it to the Agency within ten (10) days of Contractor's receipt of notice of Non-acceptance so that the Agency may re-conduct its Acceptance Tests with respect to such Deliverable. In the event the Agency determines, after re-conducting its Acceptance Tests with respect to any Deliverable that Contractor has attempted to correct or repair pursuant to this section, that such Deliverable fails to satisfy its Acceptance Tests, then the Agency shall have the continuing right, at its sole option, to:

- 1.14.1 Require Contractor to correct and repair such Deliverable within such period of time as the Agency may specify in a written notice to Contractor;
- 1.14.2 Refuse to accept such Deliverable without penalty and without any obligation to pay any fees or other amounts associated with such Deliverable (or receive a refund of any fees or amounts already paid with respect to such Deliverable);
- 1.14.3 Accept such Deliverable on the condition that any fees or other amounts payable with respect thereto shall be reduced or discounted to reflect, to the Agency's satisfaction, the Deficiencies present therein and any reduced value or functionality of such Deliverable or the costs likely to be incurred by the Agency to correct such Deficiencies; or
- 1.14.4 Terminate this Contract and/or seek any and all available remedies, including damages. Notwithstanding the provisions of Section 1.6.1 of this Contract, the Agency may terminate this Contract pursuant to this section without providing Contractor with any notice or opportunity to cure provided for in Section 1.6.1. The Agency's right to exercise the foregoing rights and remedies, including termination of this Contract, shall remain in effect until Acceptance Tests are successfully completed to the Agency's satisfaction and the Agency has provided Contractor with written notice of Final Acceptance. If the Agency determines that all Deliverables satisfy its Acceptance Tests, the Agency shall provide Contractor with notice of Final Acceptance with respect to such Deliverables. Contractor's receipt of any notice of Acceptance, including Final Acceptance, with respect to any Deliverable(s) shall not be construed as a waiver of any of the Agency's rights to enforce the terms of this Contract or require performance in the event Contractor breaches this Contract or any Deficiency is later discovered with respect to such Deliverable(s).

1.15 **Contract Administration**

1.15.1 **Independent Contractor**

The status of the Contractor shall be that of an independent contractor. The Contractor, its employees, agents and any subcontractors performing under this Contract are not employees or agents of the State or any agency, division or department of the State simply by virtue of work performed pursuant to this Contract. Neither the Contractor nor its employees shall be considered employees of the Agency or the State for federal or state tax purposes simply by virtue of work performed pursuant to this Contract. The Agency will not withhold taxes on behalf of the Contractor (unless required by law).

1.15.2 Incorporation of Documents

To the extent this Contract arises out of an RFB, the parties acknowledge that the Contract consists of these contract terms and conditions as well as the RFB and the Bid Proposal. The RFB and the Bid Proposal are incorporated into the Contract by reference, except that no objection or amendment by the Contractor to the provisions of the RFB shall be incorporated by reference into the Contract unless the Agency has explicitly accepted the Contractor's objection or amendment in writing. If there is a conflict between the Contract, the RFB and the Bid Proposal, the conflict shall be resolved according to the following priority, ranked in descending order: (1) the Contract; (2) the RFB; (3) the Bid Proposal.

1.15.3 Intent of References to Bid Documents

The references to the parties' obligations, which are contained in this Contract, are intended to supplement or clarify the obligations as stated in the RFB and the Bid Proposal. The failure of the parties to make reference to the terms of the RFB or the Bid Proposal in this Contract shall not be construed as creating a conflict and will not relieve the Contractor of the contractual obligations imposed by the terms of the RFB and the Contractor's Bid Proposal. The contractual obligations of the Agency cannot be implied from the Bid Proposal.

1.15.4 Compliance with the Law; Nondiscrimination in Employment.

The Contractor, its employees, agents, and subcontractors shall not engage in discriminatory employment practices which are forbidden by federal or state law, executive orders, and rules of the Iowa Office of the Chief Information Officer. The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, orders when performing under the Contract, including without limitation, all laws applicable to the prevention of discrimination in employment (e.g., Iowa Code chapter 216 and section 19B.7) and the use of targeted small businesses as subcontractors and suppliers. Upon the State's written request, the Contractor shall submit to the State a copy of its affirmative action plan, containing goals and time specifications, and accessibility plans and policies as required under Iowa Administrative Code chapter 11—121.

The Contractor, its employees, agents and subcontractors shall also comply with all federal, state, and local laws, including any permitting and licensure requirements, in carrying out the work performed under this Contract.

In the event Contractor contracts with third parties for the performance of any of the Contractor obligations under this Contract as set forth in section 1.15.11, Contractor shall take such steps as necessary to ensure such third parties are bound by the terms and conditions contained in this section.

Notwithstanding anything in this Contract to the contrary, Contractor's failure to fulfill any requirement set forth in this section shall be regarded as a material breach of this Contract and the State may cancel, terminate, or suspend, in whole or in part, this Contract. The State may further declare Contractor ineligible for future state contracts in accordance with authorized procedures or the Contractor may be subject to other sanctions as provided by law or rule.

If all or a portion of the funding used to pay for the Deliverables is being provided through a grant from the Federal Government, Contractor acknowledges and agrees that pursuant to applicable federal laws, regulations, circulars and bulletins, the awarding agency of the Federal Government reserves certain rights including, without limitation a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes, the Deliverables developed under this Contract and the copyright in and to such Deliverables.

1.15.5 Procurement

Contractor shall use procurement procedures that comply with all applicable federal, state, and local laws and regulations.

1.15.6 Non-Exclusive Rights

This Contract is not exclusive. The Agency reserves the right to select other contractors to provide Deliverables similar or identical to those described in the Scope of Work during the term of this Contract.

1.15.7 Non-Supplanting Requirement

To the extent required by state or federal law, federal and state funds made available under this Contract shall be used to supplement and increase the level of state, local and other non-federal funds that would in the absence of such federal and state funds be made available for the programs and activities for which funds are provided and will in no event take the place of state, local and other non-federal funds.

1.15.8 Compliance with Iowa Code chapter 8F

If the Contract is subject to the provisions of Iowa Code chapter 8F, the Contractor shall comply with Iowa Code chapter 8F with respect to any subcontracts it enters into pursuant to this Contract. Any compliance documentation, including but not limited to certifications, received from subcontractors by the Contractor shall be forwarded to the Agency.

1.15.9 Amendments

This Contract may be amended in writing from time to time by mutual consent of the parties. Amendments to the General Terms for IT Services Contracts may appear in the Special Terms.

1.15.10 Third Party Beneficiaries

There are no third party beneficiaries to this Contract. This Contract is intended only to benefit the State and the Contractor.

1.15.11 Use of Third Parties

The Agency acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor's obligations under this Contract. The Contractor shall notify the Agency in writing of all subcontracts relating to Deliverables to be provided under this Contract prior to the time the subcontract(s) become effective. The Agency reserves the right to review and approve all subcontracts. The

Contractor may enter into these contracts to complete the project provided that the Contractor remains responsible for all Deliverables provided under this Contract. All restrictions, obligations and responsibilities of the Contractor under this Contract shall also apply to the subcontractors and the Contractor shall include in all of its subcontracts a clause that so states. The Agency shall have the right to request the removal of a subcontractor from the Contract for good cause.

1.15.12 Choice of Law and Forum

The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the conflict of law provisions of Iowa law. Any and all litigation commenced in connection with this Contract shall be brought and maintained solely in Polk County District Court for the State of Iowa, Des Moines, Iowa, or in the United States District Court for the Southern District of Iowa, Central Division, Des Moines, Iowa, wherever jurisdiction is appropriate. This provision shall not be construed as waiving any immunity to suit or liability including without limitation sovereign immunity in State or Federal court, which may be available to the Agency or the State of Iowa.

1.15.13 Assignment and Delegation

Contractor may not assign, transfer or convey in whole or in part this Contract without the prior written consent of the Agency. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment. The Contractor may not delegate any of its obligations or duties under this Contract without the prior written consent of the Agency. The Contractor may not assign, pledge as collateral, grant a security interest in, create a lien against, or otherwise encumber any payments that may or will be made to the Contractor under this Contract.

1.15.14 Integration

This Contract represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included in this Contract.

1.15.15 Headings or Captions

The paragraph headings or captions used in this Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.

1.15.16 Not a Joint Venture

Nothing in this Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties hereto. Each party shall be deemed to be an independent contractor contracting for services and acting toward the mutual benefits expected to be derived herefrom. No party, unless otherwise specifically provided for herein, has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to this Contract.

1.15.17 Joint and Several Liability

If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of this Contract, and for any default of activities and obligations.

1.15.18 Supersedes Former Contracts or Agreements

This Contract supersedes all prior contracts or agreements between the Agency and the Contractor for the Deliverables to be provided in connection with this Contract.

1.15.19 Waiver

Except as specifically provided for in a waiver signed by duly authorized representatives of the Agency and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

1.15.20 Notice

Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by a reliable carrier which shall be addressed to the person who signed the Contract on behalf of the party at the address identified in the Contract Declarations & Execution Page(s) at the address specified on the forms. Each such notice shall be deemed to have been provided:

1.15.20.1 At the time it is actually received; or,

1.15.20.2 Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,

1.15.20.3 Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail. From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

1.15.21 Cumulative Rights

The various rights, powers, options, elections and remedies of any party provided in this Contract, shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled.

1.15.22 Severability

If any provision of this Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of this Contract.

1.15.23 Time is of the Essence

Time is of the essence with respect to the Contractor's performance of the terms of this Contract. Contractor shall ensure that all personnel providing Deliverables to the Agency are responsive to the Agency's requirements and requests in all respects.

1.15.24 Authorization

Contractor represents and warrants that:

1.15.24.1 It has the right, power and authority to enter into and perform its obligations under this Contract.

1.15.24.2 It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of this Contract, and this Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

1.15.25 Successors in Interest

All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

1.15.26 Records Retention and Access

The Contractor shall maintain accurate, current, and complete records of the financial activity of this Contract which sufficiently and properly document and calculate all charges billed to the Agency throughout the term of this Contract and for a period of at least five (5) years following the date of final payment or completion of any required audit (whichever is later). If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the five (5) year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five (5) year period, whichever is later. The Contractor shall permit the Agency, the Auditor of the State or any other authorized representative of the State and where federal funds are involved, the Comptroller General of the United States or any other authorized representative of the United States government, to access and examine, audit, excerpt and transcribe any directly pertinent books, documents, papers, electronic or optically stored and created records or other records of the Contractor relating to orders, invoices or payments or any other documentation or materials pertaining to this Contract, wherever such records may be located. The Contractor shall not impose a charge for audit or examination of the Contractor's books and records. Based on the audit findings, the Agency reserves the right to address the Contractor's board or other managing entity regarding performance and expenditures.

1.15.26.1 Records of financial activity shall include records that adequately identify the source and application of funds. When the terms of this Contract require matching funds, cash contributions made by the Contractor and third party in-kind (property or service) contributions must be verifiable from the Contractor's records. These records must contain information pertaining to contract amount, obligations, unobligated balances, assets, liabilities, expenditures, income, and third-party reimbursements.

- 1.15.26.2 The Contractor shall maintain accounting records supported by source documentation that may include but are not limited to cancelled checks, paid bills, payroll, time and attendance records, and contract award documents.
- 1.15.26.3 The Contractor, in maintaining project expenditure accounts, records and reports, shall make any necessary adjustments to reflect refunds, credits, underpayments or overpayments, as well as any adjustments resulting from administrative or compliance reviews and audits. Such adjustments shall be set forth in the financial reports filed with the Agency.
- 1.15.26.4 The Contractor shall maintain a sufficient record keeping system to provide the necessary data for the purposes of planning, monitoring and evaluating its program.
- 1.15.26.5 The Contractor shall retain all medical records for a period of six (6) years from the last date of service for each patient; or in the case of a minor patient or client, for a period consistent with that established by Iowa Code section 614.1(9). Client records, which are non-medical, must be maintained for a period of five (5) years.

1.15.27 Audits or Examination of Records

- 1.15.27.1 Contractors that expend \$750,000 or more in a fiscal year in federal awards (from all sources) shall have a single audit conducted for that year in accordance with the provisions of OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements. Single audits must be completed and the data collection form and reporting package must be submitted electronically to the Federal Audit Clearinghouse within the earlier of thirty (30) calendar days after Contractor's receipt of the auditor's report(s), or nine months after the end of the audit period. The Contractor shall submit to the Agency one (1) copy of the separate letter to management addressing non-material findings, if provided by the auditor, promptly following receipt by Contractor. Contractor shall also submit one
- 1.15.27.1.1 copy of the final audit report to the Agency within thirty (30) days after Contractor's receipt thereof, if either the schedule of findings and questioned costs or the summary schedule of prior audit findings includes any audit findings related to federal awards provided by the Agency. The requirements of this subsection shall apply to the Contractor as well as any subcontractors.
- 1.15.27.2 If a Contractor is independently audited but is not required to submit the audit report per the criteria in subsection 1.15.27.1 above, the Contractor shall submit to the Agency one (1) copy of the separate letter to management addressing non-material findings, if provided by the auditor, promptly following receipt by Contractor. Within fifteen (15) days following

Agency's request, the Contractor shall also submit one (1) copy of the final audit report to the Agency.

1.15.27.3 The Agency may require, at any time and at its sole discretion, that recipients of non-federal and/or federal funds have an audit performed. The Contractor shall submit one (1) copy of the audit report to the Agency within thirty (30) days of its issuance, unless specific exemption is granted in writing by the Agency. The Contractor shall submit with the audit report a copy of the separate letter to management addressing non-material findings, if provided by the auditor. The Contractor may be required to comply with other prescribed compliance and review procedures.

1.15.27.4 The Contractor shall be solely responsible for the cost of any required audit unless otherwise agreed in writing by the Agency.

1.15.28 Qualifications of Staff

The Contractor shall be responsible for assuring that all persons, whether they are employees, agents, subcontractors or anyone acting for or on behalf of the Contractor, are properly licensed, certified or accredited as required under applicable state law and the Iowa Administrative Code. The Contractor shall provide standards for service providers who are not otherwise licensed, certified or accredited under state law or the Iowa Administrative Code.

1.15.29 Solicitation

The Contractor represents and warrants that no person or selling agency has been employed or retained to solicit and secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingency excepting bona fide employees or selling agents maintained for the purpose of securing business.

1.15.30 Obligations Beyond Contract Term

This Contract shall remain in full force and effect to the end of the specified term or until terminated pursuant to this Contract. All obligations of the Agency and the Contractor incurred or existing under this Contract as of the date of expiration or termination will survive the termination or expiration of this Contract.

1.15.31 Counterparts

The parties agree that this Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

1.15.32 Delays or Impossibility of Performance

Neither party shall be in default under the Contract if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or impossibility is caused by a "force majeure." The term "force majeure" as used in this Contract includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar causes. The delay or

impossibility of performance must be beyond the control and without the fault or negligence of the parties. "Force majeure" does not include: financial difficulties of the Contractor or any parent, subsidiary, affiliated or associated company of Contractor; claims or court orders that restrict Contractor's ability to deliver the Deliverables contemplated by this Contract; strikes; labor unrest; or supply chain disruptions. If delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Contract unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as defined in this Contract. If a "force majeure" delays or prevents the Contractor's performance, the Contractor shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Agency. The party seeking to exercise this provision and not perform or delay performance pursuant to a "force majeure" shall immediately notify the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.

1.15.33 Suspensions and Debarment

The Contractor certifies pursuant to 48 CFR Part 9 that neither it nor its principles are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any federal Agency or State Agency. The Contractor certifies that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contracts with the State of Iowa.

1.15.34 Conflict of Interest

Contractor represents, warrants, and covenants that no relationship exists or will exist during the Contract period between the Contractor and the Agency that is a conflict of interest. No employee, officer or agent of the Contractor or subcontractor shall participate in the selection or in the award or administration of a subcontract if a conflict of interest, real or apparent, exists. The provisions of Iowa Code ch. 68B shall apply to this Contract. If a conflict of interest is proven to the Agency, the Agency may terminate this Contract, and the Contractor shall be liable for any excess costs to the Agency as a result of the conflict of interest. The Contractor shall establish safeguards to prevent employees, consultants, or members of governing bodies from using their positions for purposes that are, or give the appearance of being, motivated by the desire for private gain for themselves or others with whom they have family, business, or other ties. The Contractor shall report any potential, real, or apparent conflict of interest to the Agency.

1.15.35 Certification Regarding Sales and Use Tax

By executing this Contract, the Contractor certifies it is either (a) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by Iowa Code chapter 423; or (b) not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in Iowa Code subsections 423.1(47) & (48). The Contractor also acknowledges that the Agency may declare the

Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the Agency or its representative filing for damages for breach of contract.

1.15.36 Right to Address the Board of Directors or Other Managing Entity

The Agency reserves the right to address the Contractor's board of directors or other managing entity of the Contractor regarding performance, expenditures and any other issue as appropriate. The Agency determines appropriateness.

1.15.37 Repayment Obligation

In the event that any State and/or federal funds are deferred and/or disallowed as a result of any audits or expended in violation of the laws applicable to the expenditure of such funds, the Contractor shall be liable to the Agency for the full amount of any claim disallowed and for all related penalties incurred. The requirements of this paragraph shall apply to the Contractor as well as any subcontractors.

1.15.38 Further Assurances and Corrective Instruments

The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such amendments hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Contract.

1.15.39 Reporting Requirements

If this Contract permits other State agencies and political subdivisions to make purchases off of the Contract, the Contractor shall keep a record of the purchases made pursuant to the Contract and shall submit a report to the Agency on a quarterly basis. The report shall identify all of the State agencies and political subdivisions making purchases off of this Contract and the quantities purchased pursuant to the Contract during the reporting period.

1.15.40 Immunity from Liability

Every person who is a party to the Contract is hereby notified and agrees that the State, the Agency, and all of their employees, agents, successors, and assigns are immune from liability and suit for or from Contractor's and/or subcontractors' activities involving third parties and arising from the Contract.

1.15.41 Public Records

The laws of the State require procurement records to be made public unless otherwise provided by law.

1.15.42 Use of Name or Intellectual Property

Contractor agrees it will not use the Agency and/or State's name or any of their intellectual property, including but not limited to, any State, state agency, board or commission trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the Agency and/or the State.

1.15.43 Taxes

The State is exempt from Federal excise taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. The State is exempt from State and local sales and use taxes on the Deliverables. [State of Iowa Tax Exempt Letter](#)

1.15.44 No Minimums Guaranteed

The contract does not guarantee any minimum level of purchases or any minimum amount of compensation.

1.16 Compliance to Iowa IT Policies and Standards

1.16.1 Contractor will comply with and adhere to all Department and State information technology standards, including, without limitation, all technical and security standards, procedures and protocols, and provide training to Contractor's employees and subcontractors concerning such standards, procedures and protocols. Current standards are accessible online at <https://ocio.iowa.gov/standards>.

1.16.2 Contractor will take all precautions and actions necessary to: (i) prevent unauthorized access to the Department's and the State's systems, networks, computers, property, records, data, and information; and (ii) ensure that all of the Department's and the State's documentation, electronic files, data, and systems are developed, used, and maintained in a secure manner, protecting their confidentiality, integrity and availability.

1.16.3 Contractor agrees that it will not copy, reproduce, transmit, or remove any Department (or State) information or data without the prior written consent of the Department. Contractor agrees that it shall be liable for any damages, losses, and expenses suffered or incurred by the Department or the State as a result of: (i) any breach of this section, or (ii) any breaches of security (including those described below) that are caused by any action or omission of Contractor or Contractor's employees, agents and subcontractors. Breaches of security include, but are not limited to disclosure of confidential or sensitive information; unauthorized access to Department or State systems; illegal technology transfer; sabotage or destruction of Department or State information or information systems; compromise or denial of Department or State information or information systems; damage to or loss of Department or State information or information systems; and theft.

1.16.4 The Contractor shall immediately report to the Department any such breach of security. In the event of a breach of this section or any breach of security as described herein, the Department may terminate this Contract immediately without penalty or liability to the Department and the State and without affording Contractor any opportunity to cure.

1.17 Additional Information Technology Terms and Conditions**1.17.1 Off-Shore Sourcing**

The State requires that all state data (including directory data and metadata) stays within the continental United States at all times (at rest and in transport).

1.17.2 **Data Ownership**

1.17.2.1 The State and Governmental Entities will be and remain the sole and exclusive owners of all data of any kind relating in any way to this Contract, the Deliverables provided hereunder, and/or Contractor's performance of its duties under this Contract, including, without limitation, all data in any way provided, submitted, modified, processed, abstracted, adapted, compiled, reproduced, utilized or altered by or on behalf of the State, any Governmental Entity or any User (including by or through Contractor on behalf of the State or any Governmental Entity).

1.17.2.2 The Governmental Entity that collects, stores, generates, or maintains information or data shall be considered a "Data Custodian." The Data Custodian shall retain ownership of any and all such data, including any data associated with their application at any time. The Data Custodian must approve all access to its data. The Contractor shall not access State user accounts or State data, except (i) in the course of data center operations, (ii) in response to service or technical issues, (iii) as required by the express terms of this contract or (iv) at the State's written request. In the interest of clarity, "data" as referred to in this Section is not intended to refer to Source Code or Software except to the extent that any of these include, incorporate or otherwise utilize data that is owned by the State, including without limitation all data of any kind relating in any way to the Contractor, this Contract, the Deliverables provided hereunder, and/or Contractor's performance of its duties under this Contract, including, but not limited to, all data in any way provided, submitted, modified, processed, abstracted, adapted, compiled, reproduced, utilized or altered by or on behalf of the State, any Governmental Entity or any User (including by or through Contractor on behalf of the State or any Governmental Entity), in which case, any such data that is included or incorporated into, or otherwise utilized in connection with, the Contractor's proprietary Source Code or Software shall be and remain exclusively owned by the State, and Contractor hereby assigns any and all of its right title and interest in and to such data. Also, in the interest of clarity, to the extent Contractor incorporates or uses any data described above or otherwise owned by the State and incorporates such data into reports or other documents, software or deliverables, such data will not lose its status as State-owned data by virtue of such incorporation or use, and Contractor hereby assigns any and all of its right title and interest in and to such data.

1.17.3 **Data Protection**

Protection of personal privacy and data shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of State information and comply with the following conditions:

- i. The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of personal data and non-public data. Such security measures shall be in accordance with recognized industry practice (ISO27001:2013 standards and controls) and not less stringent than the measures the Contractor applies to its own personal data and non-public data of similar kind.
- ii. All data obtained by the Contractor in the performance of this contract shall become and remain the property of the State.
- iii. All personal data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the personal data.
- iv. Unless otherwise stipulated, the Contractor shall encrypt all non-public data at rest and in transit. The State shall identify data it deems as non-public data to the Contractor. The level of protection and encryption for all non-public data shall be identified and mutually agreed to as a part of this contract.
- v. At no time shall any data or processes — that either belong to or are intended for the use of a State or its officers, agents or employees — be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the State.
- vi. The Contractor shall not use any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service.

1.17.4 **Data Location**

The Contractor shall provide its services to the State and its end users solely from data centers in the continental United States of America. Storage of State data at rest and all backups shall be located solely in data centers in the continental United States of America. The Contractor shall not allow its personnel or contractors to store State data on portable devices, including personal computers, except for devices that are used and kept only at its continental United States of America data centers. The Contractor shall permit its personnel and contractors to access State data remotely only as required to provide technical support. The Contractor may not provide technical user support on a 24/7 basis using a Follow the Sun model.

1.17.5 **Security Incident or Security Breach Notification**

The Contractor shall inform the State of any security incident or Security Breach.

- i. Incident Response: The Contractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing security incidents with the State should be handled on an urgent as-needed basis, as part of Contractor communication and mitigation processes as mutually agreed upon, defined by law or contained in the contract.

ii. Security Incident Reporting Requirements: The Contractor shall report a security incident to the State Identified Contact within twelve (12) hours.

iii. Breach Reporting Requirements: If the Contractor has actual knowledge of a confirmed Security Breach that affects the security of any State content that is subject to applicable Security Breach notification law as required by Iowa Code 715C.2, the Contractor shall (1) promptly notify the State Identified Contact within 12 hours or sooner, unless shorter time is required by applicable law, and (2) take best effort measures to address the Security Breach in a timely manner.

1.17.6 Security Breach Responsibilities

This section only applies when a Security Breach occurs with respect to personal data within the possession or control of the Contractor.

i. The Contractor, unless stipulated otherwise, shall within twelve (12) hours notify the State Identified Contact by telephone if it reasonably believes there has been a security incident.

ii. The Contractor, unless stipulated otherwise, shall promptly notify the State Identified Contact within 12 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a Security Breach. The Contractor shall (1) cooperate with the State as requested by the State to investigate and resolve the Security Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Security Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

iii. Unless otherwise stipulated, if a Security Breach is a direct result of the Contractor's breach of its contract obligation to encrypt personal data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the Security Breach; (2) notifications to individuals, regulators or others required by Iowa Code 715C.2; (3) a credit monitoring service required by state (or federal) law; (4) a website or a toll-free number and call center for affected individuals required by state law — all not to exceed the average per record per person cost calculated for Security Breaches in the United States (currently \$201 per record/person) in the most recent Cost of Security Breach Study: Global Analysis published by the Ponemon Institute¹⁷ at the time of the Security Breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause; all [(1) through (5)] subject to this contract's limitation of liability.

1.17.7 Background Checks

The Contractor shall conduct nationwide criminal background checks and not utilize any staff, including subcontractors, to fulfill the obligations of the contract who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Contractor shall promote and maintain an awareness of the importance of securing the State's information among the Contractor's employees and agents.

1.17.8 **Right to Remove Individuals**

The State shall have the right at any time to require that the Contractor remove from interaction with State any Contractor representative who the State believes is detrimental to its working relationship with the Contractor. The State shall provide the Contractor with notice of its determination, and the reasons it requests the removal. If the State signifies that a potential security violation exists with respect to the request, the Contractor shall immediately remove such individual. The Contractor shall not assign the person to any aspect of the contract or future work orders without the State's consent.

**Attachment #3
Exceptions Form**

Please list any and all exceptions to this RFB in this section. Include section and reason for exception:
(Make additional pages if necessary)

	<u>Section</u>	<u>Exception</u>
1.	_____	_____
	_____	_____
2.	_____	_____
	_____	_____
3.	_____	_____
	_____	_____
4.	_____	_____
	_____	_____
5.	_____	_____
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7.	_____	_____
	_____	_____
8.	_____	_____